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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1929

No. 364

BOARD OF RAILROAD COMMISSIONERS OF THE STATE OF NORTH DAKOTA, C. W. McDONNELL, FAY HARDING, ET AL., ETC., APPELLANTS,

vs.

GREAT NORTHERN RAILWAY COMPANY, NORTHERN PACIFIC RAILWAY COMPANY, MINNEAPOLIS, ST. PAUL & SAULT STE. MARIE RAILWAY COMPANY, ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF NORTH DAKOTA

FILED AUGUST 31, 1929

(34,495)

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IN UNITED STATES DISTRICT COURT, DISTRICT OF NORTH DAKOTA, SOUTHWESTERN DIVISION

No. 459

GREAT NORTHERN RAILWAY COMPANY, NORTHERN PACIFIC Railway Company, Minneapolis, St. Paul & Sault Ste. Marie Railway Company, Chicago, Milwaukee, St. Paul & Pacific Railroad Company, and Farmers Grain and Shipping Company, Plaintiffs,

vs.

BOARD OF RAILROAD COMMISSIONERS OF THE STATE OF NORTH Dakota, and C. W. McDonnell, Fay Harding, and Ben C. Larkin, as Members of and Constituting said Board, and James Morris, as Attorney General of the State of North Dakota, Defendants.

BILL OF COMPLAINT—Filed June 25, 1929

To the Honorable the Judges of the District Court of the United States for the District of North Dakota, Southwestern Division:

Great Northern Railway Company, Northern Pacific Railway Company, Minneapolis, St. Paul & Sault Ste. Marie Railway Company, Chicago, Milwaukee, St. Paul & Pacific Railroad Company, and Farmers Grain and Shipping Company bring this, their bill of complaint, against the Board of Railroad Commissioners of the State of North Dakota, and C. W. McDonnell, Fay Harding and Ben C. Larkin as members of and constituting said Board, and James Morris as Attorney General of the State of North Dakota, and thereupon complain and allege:

I

This is a suit arising under the constitution and laws of the United States, particularly under the commerce clause of the Constitution and the Fourteenth Amendment thereof, and the Act of Congress known as the Interstate Commerce

Act, and involves, exclusive of interests and costs, over $3,000.00 as between each one of the plaintiffs and the said defendants.

II

The Great Northern Railway Company is a corporation created and existing under and by virtue of the laws of the state of Minnesota; Northern Pacific Railway Company is a corporation created and existing under and by virtue of [fol. 3] the laws of the state of Wisconsin; Minneapolis, St. Paul & Sault Ste. Marie Railway Company is a corporation created and existing under and b- -irtue of the laws of the states of Minnesota, Wisconsin, Michigan, and the Territory of Dakota; Chicago, Milwaukee, St. Paul & Pacific Railroad Company is a corporation created and existing under and by virtue of the laws of the state of Wisconsin; and Farmers Grain and Shipping Company is a corporation created and existing under and by virtue of the laws of the state of North Dakota; that all of said plaintiffs are common carriers of freight by rail in intrastate commerce in the State of North Dakota and in interstate commerce to, from and through the state of North Dakota and various other states.

III

C. W. McDonnell, Fay Harding, Ben C. Larkin and James Morris are each citizens of the state of North Dakota and residents within the said district and division. C. W. McDonnell, Fay Harding and Ben C. Larkin are the members of and constitute the Board of Railroad Commissioners of the state of North Dakota, which is a board or commission created and existing by virtue of the laws of the state of North Dakota. Defendant James Morris is Attorney General of the state of North Dakota.

IV

Among powers intrusted to said Board of Railroad Commissioners by the laws of the state of North Dakota, and particularly by Section 4728 of Compiled Laws of North Dakota, 1913, and Section 4795a6 of Supplement to 1913 Compiled Laws or North Dakota, is the power to fix lawful rates and charges for the transpor-

tation of freight between points in the state of North Dakota. The Board is required to fix rates that are just, reasonable and non-discriminatory and may lawfully alter or amend any rate previously established. Any failure or refusal by any railroad company to comply with the order of the said Board of Railroad Commissioners prescribing rates for the intrastate transportation of freight would, under Section 4737, Compiled Laws, 1913, constitute a misdemeanor and would subject such railroad to a penalty of not less than five hundred dollars nor more than five thousand dollars for each offense, and in addition thereto under Section 4734, Compiled Laws, 1913, would subject said railroad to liability in the amount of three times the [fol. 4] damage sustained through such failure to comply with said orders by any person injured by such failure or refusal to comply, together with costs and a reasonable attorney's fee. It is made the duty of the Board of Railroad Commissioners by Sections 589 and 590 of the Compiled Laws of North Dakota, 1913, to inquire into any neglect or violation of the laws of the State of North Dakota, including said sections 4734 and 4737, Compiled Laws, 1913, by any railroad, and to enforce the laws of the state relating to railroads.

The Attorney General of the state of North Dakota is by Sections 595 and 600 of the Compiled Laws of North Dakota, 1913, made ex officio Attorney for the Board of Railroad Commissioners and required to give it such counsel and advice as it may require and as shall be necessary to *to* carry out the provisions of any law of the State, and is required to institute and prosecute any actions which the said Board may deem proper and expedient.

V

On May 8, 1929, said Board entered an order in a proceeding pending before the Board, requiring these plaintiffs to make reductions in certain class rates for intrastate transportation on their lines of railroad in North Dakota. Plaintiffs seek to enjoin defendants from putting into effect and enforcing said class rates prescribed in said order.

VI

Prior to August 26, 1920, the same scale of class rates applied intrastate in North Dakota and interstate between Minnesota, North Dakota and South Dakota, except that from Minneapolis, St. Paul and Duluth to North Dakota points the rates were slightly lower for corresponding distances. On August 26, 1920, the interstate class rates to, from and through North Dakota were advanced in some instances 35% and in other instances 33⅓%, pursuant to authority granted to plaintiffs by the Interstate Commerce Commission on July 29, 1920, in a proceeding known as Ex Parte 74 (Increased Rates, 1920, 58 I. C. C. 220), in which proceeding the Interstate Commerce Commission authorized a general advance in freight rates throughout the United States.

Plaintiffs applied to the Board of Railroad Commissioners of North Dakota for authority to make increases in the North Dakota intrastate rates, including class rates, to correspond with the said increases which they had made in [fol. 5] the interstate class rates. On December 14, 1920, the Board of Railroad Commissioners of North Dakota, in its Case No. 1592 denied this application, thus leaving the interstate class rates on a very much higher level than the intrastate class rates in North Dakota. Thereupon the Interstate Commerce Commis-ion, upon application of the plaintiffs herein, instituted a proceeding before that body under Section 13 of the Interstate Commerce Act which prohibits undue or unreasonable advantages, preferences or prejudices as between persons or localities in intrastate commerce on the one hand and interstate or foreign commerce on the other hand, and undue, unreasonable or unjust discrimination against interstate or foreign commerce. The Interstate Commerce Commission on May 3, 1921, in said proceeding, Docket 12,085 (North Dakota Rates, Fares and Charges, 61 I. C. C. 504), made a finding that the interstate rates referred to, including class rates which were established by plaintiffs as a result of the decision in Ex Parte 74, resulted in reasonable rates and charges for interstate transportation and that the failure to correspondingly increase the intrastate rates within the state of North Dakota, including the class rates, "has resulted and will

result in intrastate rates and charges lower than the corresponding rates and charges maintained on interstate traffic within the state of North Dakota, and between points in the State of North Dakota, and points in other states, in undue preference of and advantage to shippers of intrastate traffic within the state of North Dakota, in undue prejudice to shippers of interstate traffic, and in unjust discrimination against interstate commerce." The Interstate Commerce Commission made a further finding that said undue preference, undue advantage and prejudice, and unjust discrimination in violation of Section 13 of the Interstate Commerce Act, can and should be removed by making increases in the North Dakota intrastate rates, including class rates, which will correspond with the increases theretofore made by the plaintiffs in the interstate rates under Ex Parte 74. On the same date the Interstate Commerce Commission entered an order in said Docket 12,085 requiring plaintiffs herein to make the same percentage advances in the intrastate freight rates in North Dakota, including the class rates, as the plaintiffs made in the interstate rates under Ex Parte 74. Plaintiffs herein made such increases in the North Dakota intrastate class and other freight rates effective May 27, 1921, and thereupon the relationship [fol. 6] between the North Dakota intrastate class rates and the interstate class rates which existed prior to August 26, 1920, was restored.

VII

Thereafter, on June 5, 1922, said Board of Railroad Commissioners of North Dakota entered an order in its case No. 1592 reciting, among other things, that the said order of the Interstate Commerce Commission of May 3, 1921, in Docket 12,085 "practically deprived this Commission of its power to regulate intrastate rates, fares and charges of the common carriers herein involved"; and that "appropriate action should be taken to terminate the disability of the state of North Dakota and the Board of Railroad Commissioners of North Dakota," and the said order of the Board of Railroad Commissioners of North Dakota dated June 5, 1922, ordered that all the intrastate rates established by the plaintiffs herein as a result of the Interstate Commerce Commission's order in Docket 12,085 "be continued in force and effect until revoked, modified or superseded by appro-

priate lawful proceedings before this Commission or as otherwise provided by law," and that a copy of said order be served on the Interstate Commerce Commission "with appropriate application for the rescinding of its order in North Dakota Rates, Fares and Charges, Docket 12,085."

Thereafter the Board of Railroad Commissioners of North Dakota filed such an application with the Interstate Commerce Commission and that commission on July 22, 1922, entered its further order in said Docket 12,085, reciting that if the Interstate Commerce Commission's order of May 3, 1921, were vacated "the existing increased intrastate rates and charges for freight services in said state will continue in force and effect until revoked, modified or superseded by appropriate lawful proceedings before said Board or as otherwise provided by law," and vacating its order of May 3, 1921, insofar as it related to intrastate freight rates in North Dakota. Thereupon the Board of Railroad Commissioners of North Dakota regained jurisdiction over the intrastate rates to the extent permitted by law under the circumstances.

VIII

The interstate class rates referred to, and the North Dakota intrastate class rates which the Interstate Commerce Commission established by its order of May 3, 1921, to avoid an unlawful discrimination against interstate commerce, are still in effect except (1) that effective July 1, 1922, the in- [fol. 7] terstate class rates were reduced 10% pursuant to findings of the Interstate Commerce Commission in Reduced Rates, 1922, 68 I. C. C. 676, and the plaintiffs herein made a corresponding reduction of 10% in the North Dakota intrastate class rates effective the same date; and (2) that effective September 11, 1925, as a result of the Interstate Commerce Commission's findings and order in its Docket 13,839, Commercial Club of Fargo v. A. W. Ry. Co., et al., 98 I. C. C. 691, the interstate class rates from Fargo, N. D., to points in Minnesota within a radius of 150 miles of Fargo were increased and the interstate rates from Minneapolis, St. Paul and Duluth to Fargo were increased and to Jamestown and Valley City, N. D., were increased for some classes and reduced for others.

IX

On March 12, 1925, the Interstate Commerce Commission instituted a proceeding before that body designated as Docket 17,000, Rate Structure Investigation, to determine to what extent, if any, any interstate rates of any carrier in the United States subject to its jurisdiction were unjust, unreasonable, unjustly discriminatory or unduly preferential, and to determine "to what extent and in what manner, if any, the rates, as above defined, of such common carriers cause undue or unreasonable advantage, preference, or prejudice as between persons or localities in intrastate commerce on the one hand, and interstate or foreign commerce on the other hand, or any undue, unreasonable or unjust discrimination against interstate or foreign commerce." Subsequently the Interstate Commerce Commission entered into extended hearings in said proceeding, particularly with respect to the class rates. The relationship that shall prevail between the North Dakota intrastate class rates and the interstate class rates in order to avoid a violation of Section 13 of the Interstate Commerce Act is in issue in said Docket 17,000. The plaintiffs herein and the Board of Railroad Commissioners of North Dakota appeared and participated in that proceeding and introduced evidence relating to that issue, the case was submitted to the Interstate Commerce Commission on briefs the latter part of 1928 and a decision may reasonably be expected some time during the year 1929.

[fol. 8]

X

On May 29, 1925, the Board of Railroad Commissioners of North Dakota instituted Case No. 2255, an investigation upon their own motion before that body for the purpose of determining to what extent, if any, the North Dakota intrastate rates may be unjust, unreasonable, unjustly discriminatory or unduly preferential, and made the plaintiffs herein respondents. Hearings were had in this proceeding and on September 2, 1927, the Board of Railroad Commissioners entered an order in that proceeding which provided with respect to the intrastate class rates that the record should be held open for further hearing after the Interstate Commerce Commission renders a decision in Docket 17,000,

Rate Structure Investigation, in which is in issue the interstate class rates and the relationship between those rates and the North Dakota intrastate class rates. On January 28, 1928, the Board of Railroad Commissioners of North Dakota reopened its general investigation, Case No. 2255, insofar as it related to class rates and certain other rates, and a further hearing was had therein in connection with the hearing in its Case 2875, a proceeding in which the Board suspended certain tariffs of the plaintiffs publishing changes in certain North Dakota intrastate class rates as a result of a requirement contained in the North Dakota Railroad Commission's order in Case 2255, dated September 2, 1927.

On May 8, 1929, the Board of Railroad Commissioners of North Dakota entered its further order in its general investigation, Case No. 2255, and in the said suspension proceeding, Case No. 2875, (a true and correct copy of which order of May 8, 1929, is hereto attached, marked "Exhibit A"), requiring, among other things, the establishment of a scale of distributing or jobbing class rates 10% lower than the existing class rates, which said distributing or jobbing class rates to apply between all jobbing or distributing points in North Dakota, and to and from such distributing or jobbing points, and to apply as maxima at intermediate points. Said order of May 8, 1929, as a result of a supplemental order of May 18, 1929, is made effective July 1, 1929, on not less than three days' notice to the Board of Railroad Commissioners of North Dakota and to the public by filing and posting of tariffs in the regular manner.

Plaintiffs seek to enjoin the defendants from putting into effect and enforcing the scale of distributing or jobbing class rates required by said order of May 8, 1929.

[fol. 9] XI

More than 90% of all North Dakota intrastate traffic which moves on class rates would move on the jobbing or distributing scale of class rates prescribed in said order of May 8, 1929, if such rates were established. Approximately 80% of all North Dakota intrastate traffic which moves on class rates moves on classes 1, 2, 3, and 4; and more than 85% of all North Dakota intrastate traffic which moves on class rates moves for distances under 160 miles.

Compliance with said order of May 8, 1929, of said Board would result in a scale of jobbing or distributing class rates for intrastate application in North Dakota more than 10% below the scale of class rates now generally applicable on the lines of plaintiffs between Minnesota, North Dakota and South Dakota in interstate commerce.

It will result in a scale of distributing or jobbing class rates for intrastate application in North Dakota which is substantially lower than the interstate class rates now in effect from Minneapolis, St. Paul and Duluth to North Dakota points (some of which interstate rates were prescribed by the Interstate Commerce Commission in the Fargo case, Docket No. 13,839), with the exception that the intrastate distributing or jobbing rates required by said order of May 8, 1929, are somewhat higher than the said class rates from Minneapolis, St. Paul and Duluth to North Dakota points for some distances over 230 miles and for Classes 5, B. C. D. and E, which classes move only a small percentage of the traffic moved on class rates.

It will result in a scale of jobbing or distributing class rates for intrastate application in North Dakota which is substantially lower for classes 1, 2, 3, 4 and A, which classes move a large amount of the traffic taking class rates, than the so-called Fargo scale of class rates prescribed by the Interstate Commerce Commission in Docket 13,839 for application from Fargo to points in Minnesota within a radius of 150 miles, and for application from certain jobbing points in Minnesota to Minnesota destinations. The jobbing or distributing scale of class rates prescribed by the Board of Railroad Commissioners of North Dakota are higher than the said Fargo scale for a comparatively few distances with respect to Classes 5th, B. C. D, and E.

[fol. 10] The present class rates for interstate transportation between North Dakota and Montana on plaintiffs' lines are now higher than the North Dakota intrastate class rates and the North Dakota intrastate class rates and the North Dakota Board's order of May 8, 1929, will result in making the North Dakota intrastate rates very substantially below the interstate scale of class rates applying between Montana and North Dakota.

The order of the Board of Railroad Commissioners of North Dakota will result in a very substantially more favorable relationship of intrastate class rates in North Dakota

to the interstate class rates to, from and through North Dakota than the relationship which the Interstate Commerce Commission found in its Docket 12,085 (61 I. C. C. 504) should exist in order to avoid a violation of Section 13 of the Interstate Commerce Act.

Establishing a distributing or jobbing scale of class rates in compliance with the said order of May 8, 1929, will reduce the net revenues of the plaintiffs herein at least $118,000 per annum.

Said interstate and intrastate class rates are interrelated and interdependent. The said order of May 8, 1929, of the Board of Railroad Commissioners of North Dakota is violative of paragraph (4) of Section 13 of the Interstate Commerce Act (Act of Congress of February 4, 1887, as amended by the Act of June 18, 1910, and Act of February 28, 1920 (49 U. S. C. A., Section 1), which expressly forbids the establishment by state authorities of intrastate rates which cause an unjust discrimination against or burden upon interstate commerce.

The intrastate distributing or jobbing scale of class rates prescribed by the Board of Railroad Commissioners of North Dakota is unreasonably low and would require shippers in interstate commerce to pay substantially higher rates to make up the losses of the plaintiffs in connection with freight moving on North Dakota intrastate class rates, resulting in an undue, unreasonable and unjust discrimination against interstate commerce generally. The said intrastate class rates prescribed by the Board of Railroad Commissioners of North Dakota would cause undue and unreasonable advantage and preference to North Dakota shippers and receivers of freight and to North Dakota localities engaged in intrastate commerce, and in undue and unreasonable prejudice to shippers and receivers of freight in interstate commerce and to localities engaged in interstate commerce, in that the former will enjoy substantially lower rates for hauls of similar commodities for the same distances under substantially similar conditions. Said reduced [fol. 11] North Dakota intrastate class rates will tend to prevent the movement of freight on class rates from Minnesota and other states to North Dakota points in competition with similar freight moving at lower rates for the same distances intrastate in North Dakota. The lower intrastate

class rates prescribed by the Board of Railroad Commissioners of North Dakota will result in shippers from North Dakota points to points in adjoining states near the North Dakota border billing their freight to the last station in North Dakota and then trucking the shipments across the state line to destination. The lower intrastate class rates will result in shippers from points in other states near the North Dakota state line draying their shipments across the state line and making them from the first sta-ion in North Dakota to the North Dakota destination. Such practices will in many instances result in destroying interstate commerce and in defeating lawful interstate rates for transportation between points in North Dakota and points in other states, and in unjustly preferring persons and localities in North Dakota intrastate commerce and in unjustly prejudicing persons and localities engaged in interstate commerce.

XII

These plaintiffs since the issuance of the order of May 8, 1929, by the North Dakota Board of Railroad Commissioners have filed a petition with the Interstate Commerce Commission to proceed under Section 13 of the Interstate Commerce Act to determine whether or not said scale of class rates required by the North Dakota Board's order of May 8, 1929, will unjustly discriminate against persons and localities in interstate commerce or constitutes a burden on interstate commerce. Plaintiffs alleged in their petition that the said scale required by the North Dakota Board does unjustly discriminate against persons and localities in the interstate commerce and is an unreasonable burden on interstate commerce in violation of Section 13 of the Interstate Commerce Act, and plaintiffs asked in said petition that the Interstate Commerce Commission institute an early investigation with respect to the matters and things set forth in said petition and that the Commission in said proceeding terminate and prohibit such discriminations and preferences by prescribing the class rates to be charged by these plaintiffs for intrastate transportation in North Dakota. When said matter is set down for hearing by the Interstate Commerce Commission all interested parties can appear and present evidence and all the facts

as to both intrastate and interstate rates can be submitted [fol. 12] to the body which, under the Constitution and laws of the United States, has authority to determine these questions. Said petition of these plaintiffs is pending before the Interstate Commerce Commission in addition to the said proceeding known as Rate Structure Investigation Docket 17,000, heretofore referred to, in which the question of whether the North Dakota intrastate rates are violative of Section 13 of the Interstate Commerce Act is in issue and in which the Interstate Commerce Commission has the power and authority to prescribe North Dakota intrastate class rates which will avoid undue discrimination and prejudice against interstate commerce.

In the event the intrastate scale of class rates prescribed by the North Dakota Board goes into effect on July 1, 1929, and continues in effect until the Interstate Commerce Commission renders a decision in the said proceeding which plaintiffs have petitioned the Interstate Commerce Commission to institute under the provisions of Section 13 of the Interstate Commerce Act, or until the Interstate Commerce Commission renders a decision in its pending proceeding entitled Rate Structure Investigation, Docket 17,000, plaintiffs will suffer irreparable loss and injury if the scale of intrastate class rates prescribed by the North Dakota Board in its order of May 8, 1929, is ultimately found by the Interstate Commerce Commission to result in an undue or unreasonable advantage, preference or prejudice as between persons or localities in intrastate commerce on the one hand and interstate or foreign commerce on the other hand, or in undue, unreasonable or unjust discrimination against interstate or foreign commerce, and if the Interstate Commerce Commission prescribes a scale of class rates for intrastate application in North Dakota which is higher than the scale prescribed by the Board of Railroad Commissioners of North Dakota.

XIII

The defendants threaten and intend, after the first day of July, 1929, to commence numerous proceedings and prosecutions both for equitable or mandatory or other relief and for a multiplicity of penalties in order to force the plaintiffs to charge and collect the scale of class rates

prescribed by the order of May 8, 1929, unless plaintiffs voluntarily file new tariffs and put such rates into effect. The proceedings contemplated and threatened by defendants will subject plaintiffs to multitudinous and vexatious suits both for injunctive or mandatory and other relief and [fol. 13] for fines and penalties, and would, if such proceedings be permitted, prevent plaintiffs, their officers and employees, from obeying the mandate of the Interstate Commerce Act against unlawful discriminations and would directly interfere with and burden interstate commerce. Plaintiffs allege that the penalties for failure to put into effect the rates prescribed in said order of May 8, 1929, are so severe as to compel compliance though plaintiffs are convinced that such rates will ultimately be found unlawful; that said penalties are so large as to deny plaintiffs the equal protection of the law and deprive them of their property without due process of law. Plaintiffs allege that they are without a plain, adequate and complete remedy at law.

Wherefore, inasmuch as the plaintiffs are remediless by the strict rules of the common law and only relievable in equity, the plaintiffs pray:

That the defendants, Board of Railroad Commissioners of the State of North Dakota, and C. W. McDonnell, Fay Harding, and Ben C. Larkin, as members of and constituting said Board, and James Morris, as Attorney General of the state of North Dakota, be required to make full and direct answer to this bill of complaint (but not under oath, answer under oath being expressly waived);

That defendants C. W. McDonnell, Fay Harding and Ben C. Larkin, as members of and constituting the Board of Railroad Commissioners of North Dakota, be enjoined and restrained from putting into effect said order of May 8, 1929, insofar as it relates to the establishment of a jobbing or distributing scale of class rates, and that said defendants be required to suspend said order and any tariffs prescribing said rates.

That defendants C. W. McDonnell, Fay Harding and Ben C. Larkin, as members of and constituting the Board of Railroad Commissioners of North Dakota, and James Morris, as Attorney General of the state of North Dakota, be enjoined and restrained from bringing any action or

proceeding of any sort whatsoever to enforce said new scale of rates or to hinder or obstruct or prevent the charging and collection by plaintiffs of the existing scale of class rates for intrastate application in North Dakota;

That said defendants be so enjoined and restrained until and only until the Interstate Commerce Commission has determined in said Docket 17,000, or in said Section 13 proceeding which plaintiffs petitioned the Interstate Commerce Commission to institute, whether the intrastate distributing or jobbing scale of class rates prescribed in said [fol. 14] order of May 8, 1929, causes any undue or unreasonable advantage, preference or prejudice as between persons or localities in intrastate commerce on the one hand and interstate or foreign commerce on the other hand, or any undue, unreasonable or unjust discrimination against interstate or foreign commerce under Section 13 of the Interstate Commerce Act, or until said proceedings are finally determined, unless it be determined in said proceedings, or either of them, by the Interstate Commerce Commission that the proposed scale or rates does unlawfully discriminate against interstate commerce or persons and localities in interstate commerce and the Interstate Commerce Commission directs the establishment or permits the establishment of intrastate rates on a higher basis than the scale required by the Board of Railroad Commissioners of North Dakota, in which event plaintiffs pray that said defendants and their respective successors in office be perpetually enjoined and restrained from enforcing the scale of rates provided for in said order of May 8, 1929;

That defendants C. W. McDonald, Fay Harding and Ben C. Larkin, as members of and constituting the Board of Railroad Commissioners of North Dakota, and James Morris, as Attorney General of the State of North Dakota, be perpetually enjoined and restrained from instituting any proceeding to subject the plaintiffs to the penalties provided in section 4737, Compiled Laws 1913, or by any other section of said Compiled Laws or statute of the State of North Dakota, for failure to comply with said order of May 8, 1929;

That an interlocutory injunction be issued restraining the defendants, and each of them, as prayed, during the

pendency of this action; and that a temporary restraining order be issued restraining the defendants, and each of them, until the hearing and determination of the application for an interlocutory injunction;

That plaintiffs have such other and further relief in the premises as the needs of the case shall require and to your Honors shall seem meet; and may it please your Honors to grant also to plaintiffs a writ of subpœna to be directed to the said Board of Railroad Commissioners of North Dakota and to C. W. McDonnell, Fay Harding and Ben C. Larkin, as members of and constituting said Board, and James Morris, as Attorney General of the state of North Dakota, and each of them, commanding them and each of [fol. 15] them to appear and make answer to plaintiffs' bill of complaint at a certain time, and to abide the further order of the Court.

Dated June 20, 1929.

D. F. Lyons, F. J. Gehan, J. N. Davis, A. H. Lossow, Lawrence, Murphy & Nilles, F. G. Dorety, R. J. Hagman, Solicitors for Plaintiffs.

[fol. 16] *Duly sworn to by B. W. Scandrett. Jurat omitted in printing.*

[fol. 17] EXHIBIT A TO BILL OF COMPLAINT

BOARD OF RAILROAD COMMISSIONERS, STATE OF NORTH DAKOTA

Case No. 2255

In the Matter of Investigation, Upon the Commission's Own Motion, Into the Freight Rates, Classifications, Rules, Regulations, Charges, and Practices of the Railroads Serving North Dakota, Applicable to All Commodities Moving in Carload and/or Less-than-carload Lots Intrastate Between Points Within the State of North Dakota

Supplemental Findings of Fact and Conclusions

Case No. 2875

In the Matter of Suspension and Investigation of CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY (H. E. Byram, Mark W. Potter and Edward J. Brundage, Receivers), Supplement No. 6 to N. D. R. C. No. 88 and Supplement No. 1 to N. D. R. C. No. 94; GREAT NORTHERN RAILWAY COMPANY, Supplement No. 2 to N. D. R. C. No. 79; NORTHERN PACIFIC RAILWAY COMPANY, Supplement No. 3 to N. D. R. C. No. 167; Supplement No. 2 to N. D. R. C. No. 200, Publishing Increased Freight Rates on Classes and Commodities Intrastate Between Stations in North Dakota, Filed to Become Effective November 28, 1927

Findings of Fact and Conclusions

Schedules under suspension in Case No. 2875 found not justified and ordered cancelled.

Certain other changes in class rates ordered.

Appearances:

As stated in the original report in Case No. 2255 with the following additions:

F. V. Hutchinson, appearing on behalf of the Chamber of Commerce, Fargo, North Dakota.

E. B. Murphy, appearing for the Jamestown Warehouse Company and the Jamestown Chamber of Commerce.

Thomas Berge, appearing for the Greater Grand Forks Traffic Association, Grand Forks, North Dakota.

C. H. Burch, Drake, North Dakota, appearing in his own behalf.

[fol. 18] By the COMMISSION:

In our original report dated September 2, 1927, in Case No. 2255, we said that there appears to be no reason why action should not be deferred in connection with class rates pending disposition of the general investigation of class rates now being jointly conducted by the Interstate Commerce and western State Railroad Commissions under Docket 17,000, Part 2. In connection with Jamestown's complaint of discrimination, we found that unlawful discrimination existed and ordered the carriers to file reasonable and non-discriminatory tariffs. In compliance with this latter order, the carriers filed the schedules now under suspension in Case No. 2875. At our request, these sched-

ules have been voluntarily suspended by the carriers until January 1, 1930. In assigning Case No. 2875 for hearing, we reopened Case No. 2255, in part, and heard them on one record in Bismarck on March 19, 1928.

In our original report in Case No. 2255 we said, "There is every indication that the class rate investigation being conducted jointly by the Interstate Commerce Commission and the respective State Commissions will be completed and a decision rendered within a reasonably short time," and "We are not unmindful of the fact that shippers and carriers have gone to considerable expense in preparing exhibits and submitting their case before us. The record with respect to class rates will accordingly be held open for further hearing in connection with Case No. 2255, Sub. 2, after the Interstate Case is decided."

To date the Interstate Commerce Commission, due to the thousands of pages of transcript, hundreds of exhibits, together with the tremendous scope of the investigation has been unable to render a tentative report which, as a matter of course, must be followed by briefs and lengthy oral argument. It therefore appears to us that the prayer of the shippers for relief, which has already been pending for years should not be further delayed in the hope that their problems might be solved or partially solved at some indefinite date in the future.

[fol. 19] In filing the schedules under suspension in Case No. 2875, the carriers also attempted to make certain increases in interstate rates which were suspended by the Interstate Commerce Commission in I. & S. Docket 3018, and on June 6, 1928, the Interstate Commerce Commission rendered its decision, reported in 144 I. C. C. 487. The Interstate Commission found that the suspended schedules had not been justified, and ordered them cancelled, which was done.

Complainants state that their chief interest is in the reasonableness of the intrastate rates from North Dakota jobbing points and the relationship between the North Dakota rates and those of their principal competitors, the Twin Cities and Duluth. Complainants point to the Minnesota distributing rates, which were originally applied between the Twin Cities and Duluth and North Dakota, and from Fargo, Grand Forks and Wahpeton to Minnesota.

They point out that this scale was originally about 95% of the North Dakota intrastate scale but that following the general percentage increases and reductions, and certain other changes, the North Dakota intrastate class rates at the present time are, in some instances, as much as 16% higher than the Minnesota distributing scale which the carriers had voluntarily published. The complainants point to the fact that jobbing or distributing scales are generally in effect in territory other than North Dakota, and insist that on account of the greater amount of traffic originating at jobbing points, and the regular movement, that North Dakota jobbing points are entitled to a scale of rates lower than the general distance basis. Exhibits were offered by the complainants showing that the North Dakota intrastate class rates are on a higher basis than the Minnesota intrastate rates, the South Dakota intrastate rates east of the Missouri River, as well as other rates in central western territory. They also stress the point of the admitted greater traffic density in North Dakota than in South Dakota east of the Missouri River, which latter territory enjoys a basis of class rates substantially less than North Dakota.

Complainants allege, and defendants admit, that there are three different joint line scales in North Dakota, if they can be considered as scales, ranging from 90% of the sum of the locals, to a theory of adding 35 miles to the single line distance, and, in some instances, to a joint line rate that is lower than the single line rate for the same distance. We are unable to find any justification for this. They also [fol. 20] stress the fact that this adjustment has been in effect for a number of years, seemingly a part of which time some of the rates were in violation of law, and they point to a lower of these rates and suggest that they might be the proper basis.

Complainants for Jamestown and other interior jobbing cities call attention to the fact that they have been trying for the past ten or twelve years to obtain some measure of relief from the much greater basis of joint line rates, which they are compelled to pay, in contrast with the lower basis of joint rates enjoyed by Grand Forks, Fargo and Wahpeton, and urge that some definite action be taken by us in the instant cases.

Defendant carriers first point to the several applications pending before the Interstate Commerce Commission and also to similar applications before this Commission and ask that no change be made in the rates until such time as the Interstate Commerce Commission shall pass upon their petitions, at which time they hope a proper level of reasonable and non-discriminatory rates will be promulgated. They further requested and have been granted indefinite postponement of their petitions for increases before this Commission.

They urge that the present single line intrastate rates in North Dakota are upon a much lower basis than might be proper, and cite the decision of the Interstate Commerce Commission in the Fargo-Jamestown Cases, 98 I. C. C., 691, wherein the Interstate — Commission fixed a basis of rates for application intrastate between certain points in Minnesota and interstate in a limited territory. This scale is generally higher for short distances and lower for the longer distances than the present North Dakota scale and does not coincide with the general basis between the Twin Cities and Duluth and North Dakota. Furthermore, distances under this scale are computed via multiple line routes.

Defendants lay particular stress upon the severe weather conditions prevailing in North Dakota, but the effect of these conditions is the same whether shipments move intrastate or interstate.

Defendants, particularly the Soo Line, recited the history of the Fargo and Grand Forks joint line rates, and state that for a number of years they have felt that these rates are too low, unjustly discriminatory and otherwise unlawful and should be cancelled, and that Fargo and Grand [fol. 21] Forks should be placed upon a combination basis. In our first report we discussed at length the situation of Jamestown versus Fargo, and as already stated, found unlawful discrimination, which we ordered removed. We agree that all of North Dakota's jobbing cities are entitled to equitable treatment, but there is nothing in the record to sustain the contention that joint rates should be on a combination basis. In many cases involving commodity rates, we have established joint rates by the addition of arbitraries to the single line rates, and there is no reason

why we should not continue to follow this practice in connection with all rates.

Upon the enlarged record, and upon further consideration, we are of the opinion and find:

1. That the schedules under suspension in Case No. 2875 have not been justified and shall be withdrawn and cancelled.

2. That the present joint line general distance class rates are, and for the future will be unreasonable in that they exceed the present single line general distance class rates by more than the following arbitraries in cents per 100 lbs.:

Classes	1	2	3	4	5	A	B	C	D	E
Arbitraries	8	7	6	5	3	3	3	2	2	1

3. That for the future, between all jobbing or distributing points, including Bismarck, Carrington, Devils Lake, Dickinson, Drake, Fairmount, Fargo, Grand Forks, Jamestown, Mandan, Max, Minot, New Rockford, Oakes, Valley City, Wahpeton and Williston, also between such points on the one hand and all other points on the other hand, reasonable and non-discriminatory single line class rates shall be not in excess of 90% of the current single line general distance class rates. Joint rates shall be made by the addition of the following arbitraries in cents per 100 lbs.:

Classes	1	2	3	4	5	A	B	C	D	E
Arbitraries	8	7	6	5	3	3	3	2	2	1

4. That for the future reasonable single line rates on petroleum and its products, carloads, shall not exceed 90% of the fifth class rates prescribed herein, and that joint rates shall be made by adding 3¢ per 100 lbs. to the single line rates.

5. That the jobbing scales prescribed herein shall be applied concurrently from and to all jobbing points.

[fol. 22] 6. That the Great Northern Railway Company and the Farmers Grain and Shipping Company shall be considered as a single line.

7. That not more than one arbitrary shall be added to make any joint rate. Distances for determining joint car-

load rates shall be computed via the shortest available routes where there are track connections. Distances for determining joint less than carload rates shall be computed via the same routes as carload traffic and in addition thereto via such points as less than carload freight reasonably can be transferred from one carrier to another.

8. That all rates prescribed herein shall be the maximum at directly intermediate points A longer line or longer lines may meet the rates of the shorter line or shorter lines, but shall observe such rates as maximum at intermediate points.

9. That in computing rates prescribed herein, fractions of less than ½¢ shall be dropped and fractions of ½¢ or over shall be made the next whole cent.

10. That all of these findings of fact and conclusions are without prejudice to different conclusions which may be reached in the cooperative proceedings now pending jointly before the Interstate Commerce Commission and western state Railroad Commissions.

An appropriate order will be entered.

Dated at Mismarck, North Dakota, this 8th day of May, 1929.

By the Commission:

C. W. McDonnell, President. Fay Harding, Commissioner. Ben C. Larkin, Commissioner.

[fol. 23] BOARD OF RAILROAD COMMISSIONERS, STATE OF NORTH DAKOTA

Case No. 2255

In the Matter of Investigation Upon the Commission's Own Motion, into the Freight Rates, Classifications, Rules, Regulations, Charges, and Practices of the Railroads Serving North Dakota, Applicable to All Commodities Moving in Carload and/or/Less-than-carload Lots Intrastate Between Points Within the State of North Dakota

Second Supplemental Order

Case No. 2875

Order

In the Matter of Suspension and Investigation of Chicago, Milwaukee & St. Paul Railway Company (H. E. Byram, Mark W. Potter, and Edward J. Brundage, Receivers), Supplement No. 6 to N. D. R. C. No. 88 and Supplement No. 1 to N. D. R. C. No. 94; Great Northern Railway Company, Supplement No. 2 to N. D. R. C. No. 79; Northern Pacific Railway Company, Supplement No. 3 to N. D. R. C. No. 167; Supplement No. 2 to N. D. R. C. No. 200, Publishing Increased Freight Rates on Classes and Commodities Intrastate Between Stations in North Dakota, filed to Become Effective November 28, 1927

Order

At a regular meeting of the Board of Railroad Commissioners of the State of North Dakota, all members being present, held in the offices of said Board in the City of Bismarck, North Dakota, on the 8th day of May, 1929, the above entitled matters being before said Board for determination, hearings thereon having been held and said matters having been fully and finally submitted to said Board, and having been duly considered and said Board having on the 8th day of May, 1929, made and filed of record a report containing its findings of fact and conclusions therein and directing that an order in accordance therewith be entered, which said report is hereto attached, hereby referred to and made a part hereof; therefore

It is hereby ordered:

1. That the schedules under suspension in Case No. 2875 [fol. 24] have not been justified and shall be withdrawn and cancelled and the proceedings discontinued.

2. That the present joint line general distance class rates are, and for the future will be unreasonable in that they exceed the present single line general distance class rates by more than the following arbitraries in cents per 100 lbs.:

Classes	1	2	3	4	5	A	B	C	D	E
Arbitraries	8	7	6	5	3	3	3	2	2	1

3. That for the future, between all jobbing or distributing points, including Bismarck, Carrington, Devils Lake, Dickinson, Drake, Fairmount, Fargo, Grand Forks, Jamestown, Mandan, Max, Minot, New Rockford, Oakes, Valley City, Wahpeton and Williston, also between such points on the one hand and all other points on the other hand, reasonable and non-discriminatory single line class rates shall be not in excess of 90% of the current single line general distance class rates. Joint rates shall be made by the addition of the following arbitraries in cents per 100 lbs.

Classes	1	2	3	4	5	A	B	C	D	E
Arbitraries	8	7	6	5	3	3	3	2	2	1

4. That for the future reasonable single line rates on petroleum and its products, carloads, shall not exceed 90% of the fifth class rates prescribed herein, and that joint rates shall be made by adding 3¢ per 100 lbs. to the single line rates.

5. That the jobbing scales prescribed herein shall be applied concurrently from and to all jobbing points.

6. That the Great Northern Railway Company and the Farmers Grain and Shipping Company shall be considered as a single line.

7. That not more than one arbitrary shall be added to make any joint rate. Distances for determining joint carload rates shall be computed via the shortest available routes where there are track connections. Distances for determining joint less than carload rates shall be computed via the same routes as carload traffic and in addition thereto via such points as less than carload freight reasonably can be transferred from one carrier to another.

[fol. 25] 8. That all rates prescribed herein shall be the maximum at directly intermediate points. A longer line or longer lines may meet the rates of the shorter line or shorter lines, but shall observe such rates as maximum at intermediate points.

9. That in computing rates prescribed herein, fractions of less than ½¢ shall be dropped and fractions of ½¢ or over shall be made the next whole cent.

10. That all of these findings of fact and conclusions are without prejudice to different conclusions which may be reached in the cooperative proceedings now pending jointly before the Interstate Commerce Commission and western State Railroad Commissions.

11. That all of these changes shall be made on or before May 20, 1929, or not less than three days' notice to this Commission and to the public by the filing and posting of tariffs in the regular manner, and

It is further ordered:

That these orders shall remain in effect until further orders of this Commission.

Dated at Bismarck, North Dakota, this 8th day of May, 1929.

By the Commission:

C. W. McConnell, President.

Attest: Mary E. Parsons, Secretary.

[File endorsement omitted.]

[fol. 26] In United States District Court

Application for Interlocutory Injunction—Filed June 25, 1929

Now come the plaintiffs above named and, at the time of presentation to the Court of their bill of complaint filed herein, move the Court for an interlocutory injunction pending the determination of this action restraining the defendants and each of them as prayed for by the plaintiffs in their bill of complaint.

And plaintiffs request the presiding Judge of this Court to convene three judges to hear such application for an interlocutory injunction as provided by statute.

Dated at Fargo, N. D., June 25, 1929.

D. F. Lyons, F. J. Gehan, J. N. Davis, A. H. Lossow, Lawrence, Murphy & Nilles, F. G. Dorety, R. J. Hagman, Solicitors for Plaintiffs.

[File endorsement omitted.]

IN UNITED STATES DISTRICT COURT

STIPULATION RE HEARING—Filed June 25, 1929

It is hereby stipulated and agreed that the application of the plaintiffs in the above entitled suit for an interlocutory injunction may be heard and determined by a court of three judges sitting at St. Paul, Minnesota. Said hearing shall be held in the Federal Building at St. Paul, Minnesota, at 10:00 A. M., July 2, 1929.

Dated at Fargo, N. D., June 25, 1929.

D. F. Lyons, F. J. Gehan, J. N. Davis, A. H. Lossow, Lawrence, Murphy & Nilles, F. G. Dorety, R. J. Hagman, Solicitors for Plaintiffs. James Morris, Solicitors for Defendants.

[File endorsement omitted.]

[fol. 27] IN UNITED STATES DISTRICT COURT

ORDER SETTING CASE DOWN FOR HEARING—Filed July 1, 1929

Upon the stipulation between the parties to this case, filed herein, it is

Ordered that a session of this Court be held at the United States Court Room, in the City of St. Paul, Minnesota, on July 2nd, 1929, at ten o'clock A. M., to hear the motion of the plaintiffs for a temporary restraining order against the defendants, as prayed for in the bill of complaint.

Dated this 1st day of July, 1929.

Andrew Miller, Judge.

[File endorsement omitted.]

IN UNITED STATES DISTRICT COURT

AMENDMENT TO BILL OF COMPLAINT—Filed July 2, 1929

To the Honorable the Judges of the District Court of the United States for the District of North Dakota, Southwestern Division:

The plaintiffs above named hereby amend their bill of complaint filed in the above entitled court in the above pro-

ceedings on the 25th day of June, 1929, in the following respects:

I

Paragraph X of said bill of complaint is amended so as to read as follows:

On May 29, 1925, the Board of Railroad Commissioners of North Dakota instituted Case No. 2255, an investigation upon their own motion before that body for the purpose of determining to what extent, if any, the North Dakota intrastate rates may be unjust, unreasonable, unjustly discriminatory or unduly preferential, and made the plaintiffs herein respondents. Hearings were had in this proceeding and on September —, 1927, the Board of Railroad Commissioners entered an order in that proceeding which provided with respect to the intrastate class rates that the record should be held open for further hearing after the Interstate Commerce Commission renders a decision in Docket 17,000, Rate Structure Investigation, in which is in issue the interstate class rates and relationship between those rates and the North Dakota intrastate class rates. On [fol. 28] January 28, 1928, the Board of Railroad Commissioners of North Dakota reopened its general investigation, Case No. 2255, insofar as it related to class rates and certain other rates, and a further hearing was had therein in connection with the hearing in its Case 2875, a proceeding in which the Board suspended certain tariffs of the plaintiffs publishing changes in certain North Dakota intrastate class rates as a result of a requirement contained in the North Dakota Railroad Commission's order in Case No. 2255 dated September 2, 1927.

On May 8, 1929, the Board of Railroad Commissioners of North Dakota entered its further order in its general investigation, Case No. 2255, and in the said suspension proceeding, Case No. 2875, (a true and correct copy of which order of May 8, 1929, is hereto attached, marked "Exhibit A"), requiring, among other things, the establishment of a scale of distributing or jobbing class rates 10% lower than the existing class rates, which said distributing or jobbing class rates to apply between all jobbing or distributing points in North Dakota, and to and from such distributing or jobbing points, and to apply as maxima at intermediate points. Said order of May 8, 1929, as a result of a supple-

mental order of the Board of Railroad Commissioners of North Dakota dated June 26, 1929, one day after the filing of the bill of complaint in this proceeding, is made effective on July 12, 1929, on not less than three days' notice to the Board and to the public by filing and posting of tariffs in the regular manner.

Plaintiffs seek to enjoin the defendants from putting into effect and enforcing the scale of distributing or jobbing class rates required by said order of May 8, 1929.

II

Paragraph XII of said bill of complaint is amended so as to read as follows:

These plaintiffs since the issuance of the order of May 8, 1929, by the North Dakota Board of Railroad Commissioners have filed a petition with the Interstate Commerce Commission to proceed under Section 13 of the Interstate Commerce Act to determine whether or not said scale of class rates required by the North Dakota Board's order of May 8, 1929, will unjustly discriminate against persons and localities in interstate commerce or constitutes a burden on interstate commerce. A full, true and correct copy of said petition is hereto attached, marked "Exhibit B." Plaintiffs alleged in their petition that the said scale required by [fol. 29] the North Dakota Board does unjustly discriminate against persons and localities in interstate commerce and is an unreasonable burden on interstate commerce in violation of Section 13 of the Interstate Commerce Act, and plaintiffs asked in said petition that the Interstate Commerce Commission institute an early investigation with respect to the matters and things set forth in said petition and that the Commission in said proceeding terminate and prohibit such discriminations and preferences by prescribing the class rates to be charged by these plaintiffs for intrastate transportation in North Dakota. When said matter is set down for hearing by the Interstate Commerce Commission all interested parties can appear and present evidence and all the facts as to both intrastate and interstate rates can be submitted to the body, which, under the Constitution and laws of the United States, has authority to determine these questions. Said petition of these plaintiffs is pending before the Interstate Commerce Commission

in addition to the said proceeding known as Rate Structure Investigation, Docket 17,000, heretofore referred to, in which the question of whether the North Dakota intrastate rates are violative of Section 13, of the Interstate Commerce Act is in issue and in which the Interstate Commerce Commission has the power and authority to prescribe North Dakota intrastate class rates which will avoid undue discrimination and prejudice against interstate commerce.

In the event the intrastate scale of class rates prescribed by the North Dakota Board goes into effect on July 1, 1929, and continues in effect until the Interstate Commerce Commission renders a decision in the said proceeding which plaintiffs have petitioned the Interstate Commerce Commission to institute under the provisions of Section 13 of the Interstate Commerce Act, or until the Interstate Commerce Commission renders a decision in its pending proceedings entitled Rate Structure Investigation, Docket 17,000, plaintiffs will suffer irreparable loss and injury if the scale of intrastate class rates prescribed by the North Dakota Board in its order of May 8, 1929, is ultimately found by the Interstate Commerce Commission to result in an undue or unreasonable advantage, preference or prejudice as between persons or localities in intrastate commerce on the one hand and interstate or foreign commerce on the other hand, or in undue, unreasonable or unjust discrimination against interstate or foreign commerce, and if the Interstate Commerce Commission prescribes a scale of class rates for intrastate application in North Dakota which is higher than the scale prescribed by the Board of Railroad Commissioners of North Dakota.

[fol. 30] Dated at St. Paul, Minn., this 1st day of July, 1929.

D. F. Lyons, F. J. Gehan, J. N. Davis, A. H. Lossow, Lawrence, Murphy & Nilles, F. G. Dorety, R. J. Hagman, Solicitors for Plaintiffs.

Duly sworn to by B. W. Scandrett. Jurat omitted in printing.

EXHIBIT B TO AMENDMENT TO BILL OF COMPLAINT

BEFORE THE INTERSTATE COMMERCE COMMISSION

In the Matter of Interstate Class Rates of the GREAT NORTHERN RAILWAY COMPANY and Other Carriers in the State of North Dakota

Petition under Section 13 of the Interstate Commerce Commission Act

To the Honorable Interstate Commerce Commission:

Your petitioners, Great Northern Railway Company, Northern Pacific Railway Company, Minneapolis, St. Paul & Sault Ste. Marie Railway Company, Chicago, Milwaukee, St. Paul & Pacific Railroad Company and Farmers Grain and Shipping Company, respectfully petition the Commission and allege:

[fol. 31]

I

The Great Northern Railway Company is a corporation organized and existing under the laws of the State of Minnesota, The Northern Pacific Railway Company is a corporation organized and existing under the laws of the State of Wisconsin. The Minneapolis, St. Paul & Sault Ste. Marie Railway Company is a corporation organized and existing under the laws of the States of Minnesota, Wisconsin, Michigan and the Territory of Dakota. The Chicago, Milwaukee, St. Paul & Pacific Railroad Company is a corporation organized and existing under the laws of the State of Wisconsin. The Farmers Grain and Shipping Company is a corporation organized and existing under the laws of the State of North Dakota.

II

Petitioners are all common carriers of freight and passengers by rail in intrastate commerce in the State of North Dakota and in interstate commerce between points in the State of North Dakota and numerous other states, and are all subject to the Interstate Commerce Commission Act. This petition is filed under Section 13 of the Interstate Commerce Commission Act.

III

The Board of Railroad Commissioners of the State of North Dakota is authorized and empowered by the laws of that state to fix lawful rates and charges for the transportation of freight over the petitioners' lines of railroad between points in the State of North Dakota, including class rates; and under the statutes of North Dakota failure on the part of petitioners to comply with the orders of said Board prescribing such rates constitutes a misdemeanor and subjects petitioners to a penalty of not less than $500 nor more than $5,000 for each offense.

IV

On May 29, 1925, the Board of Railroad Commissioners of North Dakota upon its own motion instituted a proceeding before that body known as Case No. 2255 for the purpose of determining to what extent, if any, the North Dakota intrastate rates for transportation of freight may be unjust, unreasonable, unjustly discriminatory or unduly preferential, and petitioners were respondents in said proceeding. Hearings were had and on September 2, 1927, said Board entered an order which provided with respect to the class rates that the record should be kept open for further hearing after the Interstate Commerce Commission renders [fol. 32] a decision in Docket 17,000, Rate Structure Investigation. In the findings upon which said order was based it was stated that the Board is greatly impressed with the advantages of hearings jointly with the Interstate Commerce Commission under the co-operative plan and that where both state and interstate rates are involved the co-operative method of disposing of the matters at issue is superior.

The Commission's order required the petitioners herein to file with the Board, subject to its approval, new tariffs which will contain reasonable and nondiscriminatory class rates between Jamestown and points on the Minneapolis, St. Paul & Sault Ste. Marie Railroad on the one hand and between Fargo and points on the Minneapolis, St. Paul & Sault Ste. Marie Railroad on the other hand.

Petitioners filed new tariffs pursuant to this requirement and the said Board suspended them in its Case No. 2875. On January 28, 1928, said Board reopened its general in-

vestigation, Case No. 2255, in so far as it related to class rates and certain other rates, and set that proceeding down for further hearing in connection with the hearing to be had in the suspension proceeding, Case No. 2875.

Subsequently on May 8, 1929, said Board issued its findings of fact and conclusions and order in the said proceedings, a true copy of which order is hereto attached marked "Exhibit A," cancelling the suspended tariffs and requiring respondents, petitioners herein, (1) to establish joint line general distance class rates for intrastate application in North Dakota on the basis of specified arbitraries over the single line rates from the point of origin to point of destination, instead of the present basis of 85% or 90% of the sum of the locals; and (2) to establish between the jobbing or distributing points in North Dakota, including seventeen specifically named, and between such jobbing points on the one hand and all other points on the other hand, single line class rates 90% of the current single line distance class rates, joint rates to be made by the addition of specified arbitraries. Said order required this jobbing or distributing scale to be applied concurrently from and to all jobbing points and to be the maximum at directly intermediate points. Said order was made effective May 20, 1929, but by supplemental order dated May 14, 1929, the effective date of the order was extended to June 1, 1929, and by supplemental order dated May 18, 1929, the effective date was extended to July 1, 1929.

[fol. 33] V

The effect of said order of May 8, 1929, will be to reduce the net revenues of the petitioners in connection with transportation of class traffic intrastate in North Dakota approximately the following sums per annum:

Great Northern Railway Company	$50,000
Northern Pacific Railway Company	50,000
Minneapolis, St. Paul & Sault Ste. Marie Railway Company	15,000
Chicago, Milwaukee, St. Paul & Pacific Railroad Company, exceeding	3,000
Farmers Grain & Shipping Company	800

or a total in excess of $118,800.00 per annum.

VI

The petitioners are not earning a return of 5¾% upon the value of their properties as found by the Interstate Commerce Commission nor will they earn in the immediate future under a continuation of the existing freight rates the rate of return upon the value of their properties prescribed by law and by the order of this Commission. The reductions in revenue incident to compliance with the North Dakota Board's class rate order will require an increase in the interstate rates of petitioners and other carriers in the rate group in which they are situated in order to compensate for such loss of revenue and in order to even approximate the rate of return prescribed by law.

VII

Compliance with said order of May 8, 1929, will cause undue and unreasonable advantage, preference and prejudice as between persons and localities in intrastate commerce in North Dakota on the one hand and interstate and foreign commerce on the other hand, and unreasonable and unjust discrimination against interstate and foreign commerce, in violation of Section 13 of the Interstate Commerce Act.

VIII

On August 26, 1920, petitioners increased the interstate class rates pursuant to authority granted by this Commission in Ex Parte 74. Petitioners applied to the Board of Railroad Commissioners of North Dakota for authority to make corresponding increases in the North Dakota intra- [fol. 34] state rates, including the class rates, which authority was denied on December 14, 1920. Thereupon the Interstate Commerce Commission, upon application of the petitioners herein, instituted a Section 13 proceeding and after hearing issued its findings and order on May 3, 1921, in North Dakota Rates, Fares and Charges, Docket 12085, 61 I. C. C. 504, requiring the same increases in the intrastate rates in North Dakota, including the class rates, as were made in the interstate rates under Ex Parte 74 to remove unjust discrimination against interstate commerce under Section 13 which the Commission found resulted

from a failure to make corresponding increases in the North Dakota intrastate rates. Petitioners complied with the Commission's order effective May 27, 1921, and thereupon the relationship existing between the North Dakota intrastate class rates and the interstate class rates prior to the advance in the interstate rates under Ex Parte 74 was restored.

IX

Thereafter on June 5, 1921, the Board of Railroad Commissioners of North Dakota entered a further order in the said proceedings pending before it which had the effect of (1) cancelling its previous order which denied authority to make corresponding increases in the intrastate rates and (2) of establishing the intrastate rates in North Dakota which the Interstate Commerce Commission prescribed by its order of May 3, 1921, in Dakota 12085, North Dakota Rates, Fares and Charges, 61 I. C. C. 504, which rates the North Dakota Board's order provided were to continue in force and effect until revoked, modified or superseded by appropriate lawful proceedings before the Board or as otherwise provided by law. Said order of the Board recited that its purpose was to regain jurisdiction over its intrastate rates which it lost as a result of the Interstate Commerce Commission's order in North Dakota Rates, Fares and Charges, Docket 12085.

Thereupon the Board filed an application with the Interstate Commerce Commission to rescind its order of May 3, 1921, in Docket 12085 which the Interstate Commerce Commission did on July 22, 1922, reciting that if the Interstate Commerce Commission's said order were vacated "the existing increased intrastate rates and charges for freight services in said state will continue in force and effect until revoked, modified or superseded by appropriate lawful proceedings before said Board or as otherwise provided by law." Thereupon the said Board regained control over [fol. 35] its intrastate rates to the extent permitted by law under the circumstances.

X

The relationship between the North Dakota intrastate class rates and the interstate class rates established by the

Interstate Commerce Commission in the Section 13 case, Docket 12085, is still in effect except (1) that on July 1, 1922, the interstate class rates were reduced 10% under Reduced Rates, 1922, 68 I. C. C. 676, and the petitioners made corresponding reductions in the North Dakota intrastate class rates; (2) effective September 11, 1925, as a result of the so-called Fargo Case (Commercial Club of Fargo v. A. W. Ry. Co., et al., 98 I. C. C. 691) the interstate class rates from Fargo, North Dakota, to points in Minnesota within a radius of 150 miles from Fargo were increased, and the interstate class rates from Minneapolis, St. Paul and Duluth to Fargo were increased and to Jamestown and Valley City, North Dakota, were increased for some classes and reduced for others, which had the general effect of relating the North Dakota intrastate class rates to the interstate rates more favorably than theretofore; and (3) a reduction of approximately 10% in the intrastate class rates upon taking effect of the North Dakota Commission's order of May 8, 1929, which will have the effect of relating the intrastate class rates to the interstate class rates on a still more favorable basis than existed as a result of the Interstate Commerce Commission's order in the Section 13 case, Docket 12085.

XI

Upon the establishment of the intrastate class rates prescribed in the North Dakota Board's order of May 8, 1929, a distributive scale of class rates will be created which will move the great bulk of the class traffic intrastate in North Dakota and which will be more than 10% below the scale of class rates now generally applicable for interstate shipments between Minnesota, North Dakota and South Dakota.

Said new intrastate class rates will be lower than the interstate class rates now in effect from Minneapolis, St. Paul and Duluth to North Dakota points, some of which were prescribed by this Commission in the Fargo Case, with the exception that the intrastate rates prescribed by the Board's order of May 8, 1929, are somewhat higher than the class rates from Minneapolis, St. Paul and Duluth [fol. 36] to North Dakota for certain distances for such classes as move the least traffic.

Said new North Dakota intrastate class rates will be substantially lower for Classes 1, 2, 3, 4, and A, which classes move the bulk of traffic on class rates, than the scale prescribed in the Fargo case for application from Fargo to certain Minnesota points and from certain jobbing points in Minnesota to Minnesota destinations, except that the new North Dakota intrastate class rates will be somewhat higher than the Fargo scale for a comparatively few distances with respect to Classes 5th, B, C, D and E.

The present interstate class rates between Montana and North Dakota are approximately 20% higher than the North Dakota intrastate class rates before making the reduction in the latter rates required by the Board's order of May 8, 1929.

XII

The North Dakota intrastate class rates are published in the following tariffs:

G. N. Ry., N. D. R. C. 93,
C. M. St. P. & P. Ry., N. D. R. C. 103.

The interstate class rates referred to above are established in the following tariffs:

G. N. Ry. I. C. C. A-6559,
N. P. Ry. I. C. C. 8504,
M. St. P. & S. S. M. I. C. C. 6286,
C. M. St. P. & P. I. C. C. B-5592,
T. G. & S. C. I. C. C. F-34,
Agent Tolls I. C. C. 1212.

XIII

Establishment of the lower basis of intrastate class rates in North Dakota required by said order of May 8, 1929, will result in trucking shipments over the state line between North Dakota and Minnesota in order to obtain the benefit of the lower North Dakota intrastate class rates and to defeat the interstate class rates now in effect, which situation existed subsequent to August 26, 1920, and prior to the time that the North Dakota intra state class rates were increased as a result of the order in Docket 12085. The lower basis of North Dakota intrastate class rates will result in numerous undue discriminations in favor of intra-

state commerce in North Dakota and to the prejudice of interstate shippers to, from and through the State of North Dakota.

[fol. 37] XIV

No traffic, operating or other conditions exist which justify the disparity between North Dakota intrastate rates and the interstate rates created by the North Dakota Board's order of May 8, 1929. The cost and expense of transporting the traffic moving on class rates between stations in North Dakota is as great or greater than the cost of transporting the same commodities in interstate commerce to and from stations in North Dakota.

XV

The existing interstate class rates for transportation to, from and through the state of North Dakota are not unjust or unreasonable, and there is a substantial movement of traffic on said class rates to, from and through the state of North Dakota. The intrastate class rates prescribed by the North Dakota Board's order of May 8, 1929, will result in rates which will be unjustly and unreasonably low for the service to be performed and the said existing intrastate rates are now less than should hereafter be charged for the movement of traffic under class rates.

XVI

Petitioners and the Board of Railroad Commissioners entered appearances and introduced evidence at the hearings in Rate Structure Investigation, Docket 17,000, Part II, which is now pending for decision by the Interstate Commerce Commission, and the record in that case shows the North Dakota intrastate class rates and interstate class rates and the relationship between the two, but it does not show the order of the North Dakota Board of May 8, 1929, which was made subsequent to the closing of the hearings in Docket 17,000, Part II. That proceeding was a co-operative proceeding with the state commissions, including the Board of Railroad Commissioners of North Dakota which had one of its members sitting with the Interstate Commerce Commission during some of the hearings.

The reductions in the class rates required by the North Dakota Board's order of May 8, 1929, are in disregard of the findings of the Interstate Commerce Commission in said Section 13 case, Docket 12085, and are in the nature of a general reduction creating a difference in the general level of class rates for intrastate and interstate commerce, similar to that which existed prior to the Interstate Commerce Commission's order in said Docket 12085.

[fol. 38] To the end, therefore, that the said undue and unreasonable advantages, preferences, prejudices and discriminations as between intrastate and interstate commerce may be removed and prohibited, your petitioners pray that this Honorable Commission institute an early investigation with respect to the matters and things herein set forth as provided for in Section 13 of the Interstate Commerce Act, that due notice thereof be given to the State of North Dakota, and that an order be entered declaring discriminatory the intrastate class rates prescribed by order of May 8, 1929, by the Board of Railroad Commissioners in so far and to the extent that the same are lower than the corresponding rates for similar interstate movements and that this Commission by proper order terminate and prohibit such discriminations and preferences by prescribing the rates, fares and charges to be made by the petitioners for class traffic intrastate in North Dakota.

Your petitioners further pray for such other additional and general relief in the premises as to this Commission may seem right and proper.

Dated this 19th day of June, 1929.

Great Northern Railway Company, by R. J. Hagman, Its Attorney. Northern Pacific Railway Company, by M. L. Countryman, Jr., Its Attorney. Minneapolis, St. Paul & Sault Ste. Marie Railway Company, by A. H. Lossow, Its Attorney. Chicago, Milwaukee, St. Paul & Pacific Railroad Company, by J. N. Davis, Its Attorney. Farmers Grain and Shipping Company, by R. J. Hagman, Its Attorney.

1120 Great Northern Building,
St. Paul, Minnesota.

[File endorsement omitted.]

[fol. 39] IN UNITED STATES DISTRICT COURT

[Title omitted]

ANSWER OF DEFENDANTS—Filed July 2, 1929

The Joint and Several Answer of Defendants to the Bill of Complaint

Now come the above-named defendants and, jointly and severally, for answer thereto, say:

1

Defendants deny paragraph one (1) of said Bill with the exception in this respect concerning which said defendants allege: The subject matter of said bill concerns class rates, wholly intrastate, within the state of North Dakota, duly found, adjudged and ordered to be effective on July 12th, 1929, by said Board of Railroad Commissioners, after due notice and hearing granted to said plaintiffs, to other carriers operating in the State of North Dakota, and to other parties over and concerning which said Board possesses ample and complete jurisdiction and powers as provided by the Laws of the State of North Dakota, subject to the powers and duties of the Interstate Commerce Commission, under Section Thirteen (13) of the Transportation Act of Congress of February 28th, 1920.

2

Defendants admit paragraph two of said bill excepting [fol. 40] that they allege on information and belief that said Minneapolis, St. Paul and Sault Ste. Marie Railway Company is a North Dakota corporation.

3

Defendants admit paragraph 3 of said Bill.

4

Concerning paragraph four of said bill, defendants admit that said Board of Railroad Commissioners possesses the power and the duty to fix lawful, reasonable and nondiscriminatory freight rates for the transportation of freight between points in the State of North Dakota, and to alter

and amend rates previously established in so doing, all as provided in Section 4728 of Compiled Laws of North Dakota and Section 4795a6 of Supplement of said 1913 Compiled Laws. In this respect defendants allege that, under and pursuant to Section 4795a1 of said supplement to said 1913 compiled Laws and as otherwise provided in the Constitution and Statutory Laws of the State of North Dakota, the said defendant Commissioners have the power and the duty to prohibit and to remedy unjust, unreasonable and discriminating intra-state freight rates not only in relation to other intra-state freight rates but also in their relations to interstate freight rates; that said Commissioners also have the power, under Section 4795c1 of said supplement to order different rates, classifications, rules and regulations in connection with the transportation of commodities from or to certain points within said state, either single line or joint line; that said Commissioners also possess the power and the duty to investigate and to inform themselves concerning interstate freight rates with reference to their unreasonableness, unjust or discriminatory character as affecting the industries, citizens or interests of said state in an unjustly discriminating manner, and otherwise, and in such event, to present [fol. 41] the facts and to appeal for relief to the Interstate Commerce Commission, all as provided in Section 591 of the Compiled Laws of the State of North Dakota.

Defendants admit the provisions of section 4737 concerning penalties and section 4734 concerning treble damages, all of said compiled laws, and also the said duties of said Commissioners to inquire into neglect or violation of the laws of said state as set forth in section 589 and 590 of said compiled laws but deny their strict application as alleged by said plaintiffs; in respect thereto, defendants allege that under violation of orders of said Commissioners, inquiry by them may be made or complaint to them may be heard and relief secured from liability and from the penalties of the law, all as prescribed in sections 4738, 4740, 4741, and 4742 of said compiled laws; that furthermore, said Commissioners may appeal to the Courts of said state for enforcement of its orders as provided in section 4743 of said compiled laws; that furthermore said plaintiffs possesses under and pursuant to the laws of said state and particularly sections 4609 c. 34, 4609 c. 35 and

4609 c. 36 of said supplement to the compiled laws of 1913, a complete, speedy and adequate remedy by appeal to the Courts of said State to inquire into and review all orders of said Commissioners with a specific provision of law for speedy hearing in preference to all other civil business.

Defendants admit the provisions of section 595 and 600 of said compiled laws with reference to the powers and *tuues* of the Attorney General.

5

Concerning paragraph 5 of said Bill, defendants deny the allegations, in the language as used and in respect thereto allege that on May 8th, 1929, the said Commissioners made their supplemental findings of fact and Conclusions in case No. 2255 concerning class rates, intrastate and in case No. 2875, heard in connection therewith, in the manner and form as set forth in Exhibit "A" attached to said Bill; that, concerning such orders, plaintiffs are seeking injunctive relief herein.

[fol. 42] 6

Concerning paragraph 6 of said Bill, defendants deny the first paragraph thereof, save in this respect that they admit that on August 26, 1920, the Interstate Commerce Commission in Ex Parte, 74 (Increased rates 1920, 58 I. C. C. 220) did authorize a general advance in freight rates throughout the United States interstate. Defendants allege that prior to that time the scale of general class rates intra state in North Dakota were considerably higher than the the same general class rates in Minnesota intra-state; that the general scale of interstate class rates from Minnesota to North Dakota points was the same as the general scale of class rates in North Dakota intrastate; that the class rates interstate between Minneapolis, St. Paul, Duluth and points taking the same rates on the one hand and points in North Dakota on the other were on a lower scale than the regular scale applying between Minnesota and North Dakota points and lower than the general scale applying intrastate in North Dakota. The general Minnesota interstate and North Dakota intra state scales also have among other things the following exceptions;

That there were also lower jobbing class rates between Fargo, Grand Forks, Wahpeton, and Fairmount, interstate to points in Minnesota, also lower interstate jobbing class rates from Thief River Falls, Minnesota, to points in North Dakota, also lower jobbing class rates intrastate between Fargo, Grand Forks, Wahpeton and Fairmount, North Dakota, to points on the Soo Line in North Dakota, all of which rates were voluntarily established by the carriers. That at that time there existed no terminal bases of class rates from North Dakota jobbing points intrastate which resulted in said jobbing points being compelled to pay the regular distance scale intra state in North Dakota except the points above noted.

Defendants admit the second paragraph of paragraph 6, save in this respect: they allege that none of the freight rates, including the class rates, as ordered by the Interstate [fol. 43] Commerce Commission, in said docket 12085 are in effect today and have not been since July 1st, 1922.

7

Defendants admit paragraph 7 of said Bill, save and except that defendants allege in respect thereto that said Commissioners during all of the times concerned had as it now has full and complete jurisdiction over intrastate rates, subject to the power and authority of said Interstate Commerce Commission under and pursuant to Section 13 of said Transportation Act, which it exercised as stated under the then existing circumstances.

8

Defendants deny paragraph 8 of said Bill and in respect thereto allege that the interstate rates, including class rates, set forth in said ex parte 74 have been materially changed and none of the same are now in force and likewise the intrastate rates adjusted under said docket No. 12085 have likewise been changed and altered and specific illustrations thereof are given in the manner and form as follows: Effective July 1st, 1922, the interstate class rates were reduced ten per cent (10%) by order of the Interstate Commerce Commission in Reduced Rates 1922, 68 I. C. C. 676: On September 11, 1925, there was a further adjustment made

by order of the Interstate Commerce Commission in commercial Club of Fargo vs. A. W. Ry. et al., 98 I. C. C. 691. The Interstate class rates from Fargo to points in Minnesota within a radius of one hundred fifty (150) miles from Fargo were adjusted by the Interstate Commerce Commission and the rate from Minneapolis, St. Paul and Duluth to Fargo were adjusted as were the rates to Jamestown and Valley City, representing both reductions and increases. The class rates from Duluth to Fargo interstate were materially reduced on ex-lake traffic. Adjustments in the local rates applying from Omaha, Nebraska, from Kansas City, Missouri, from Chicago, Illinois, representing both reductions and increases. Proportional rates from Chicago to Fargo on traffic originating East of the Illinois-Indiana state line were materially reduced, thereby reducing the [fol. 44] class rates interstate from all points east of the Indiana-Illinois state line to the Atlantic seaboards on shipments destined Fargo, North Dakota. Similar adjustments were made at Grand Forks, North Dakota. Adjustments of class rates interstate from upper Mississippi River crossings to Fargo were made on order of the Interstate Commerce Commission under date of February 21st, 1926, 107 I. C. C. 256, some being reductions others increases.

Brick rates which are commodity rates were ordered reduced interstate from points in Minnesota to points in North Dakota. A. C. Ochs Brick and Tile Company vs. C. & N. W. Ry. et al., 139 I. C. C. 695. Likewise these plaintiffs voluntarily reduced and put in force rates interstate from points both in Minnesota and Iowa to points in North Dakota representing mostly reductions on brick and other articles taking the same rate. M. St. P. & S. S. M. Ry. I. C. C. # 6330. The intrastate class rates prescribed in docket 12085 were reduced ten per cent (10%) on July 1st, 1922, by action of the carriers following the interstate reduction ordered by the Interstate Commerce Commission in reduced rates 1922, supra. Further in this very case, No. 2255, the rates on brick and articles taking the same rates intrastate from Grand Forks and other manufacturing points within the state were ordered reduced by the said Railroad Commissioners on November 14th, 1927, and said plaintiffs published said rates and put the same in force without contest. G. N. Ry. Freight Tariff N. D. R. C. No.

93. Likewise, the rates intrastate on concrete pipe were ordered adjusted by said Railroad Commissioners in case No. 2815, which represented general reductions. Plaintiffs complied with said order, and made effective the rates without complaint or contest on March 1st, 1928, Supplement No. 13 to G. N. Ry. N. D. R. C. No. 93.

The grain and grain products rates intra state for both single and joint line movement were brought under attack by the State of North Dakota doing business as the North Dakota Mill and Elevator Association and others and said Railroad Commissioners, under case No. 2375 ordered the rates reduced intrastate for single and joint line movement [fol. 45] with transit involved. For instance, on single line movement where wheat originates at Devils Lake for example, and is Milled in transit at Grand Forks for Rugby, North Dakota, the carriers charged a local rate to Grand Forks plus the local rate on the finished product from Grand Forks to Rugby; under the Commission's decision, the rate became and is now made by applying the single line rate for the total distance plus one and one half cents as a milling transit charge. On joint line traffic, with transit involved, the carrier charged the full local rate to the junction and the full local rate from the junction; on traffic not accorded transit, the carriers charged eighty-five per cent (85%) of the combination of locals. Under the Commissions decision in said Number 7325 the rate is arrived at as follows: by taking the single line rate for the entire distance plus one and one half cents for the joint line haul plus one and one half cents as the charge for milling at Grand Forks. The plaintiffs in this case, excepting the "Milwaukee" railway which was not a party, contested said Commission's decision; in case No. 2375, by appeal to the District of Burleigh County and said Court ordered said carriers to put the reduced rates into effect which they did under date of January 20th, 1927. The said carriers appealed from said decision of said District Court to the Supreme Court of the State of North Dakota, and said Court affirmed the said District Court on May 21st, 1928, in 219 (N. D.) N. W. 295. Furthermore, the plaintiff "Milwaukee Railway" in August 1925, voluntarily put in force and effect substantial reductions in the 12085 scale applying on intra state class rates and other rates in North Dakota. That in the first

decision in case No. 2255 the Board of Railroad Commissioners ordered all rates including intrastate class rates to be placed on the single line basis between points on the Great Northern Railway and points on the Farmers Grain and Shipping Company and this order was complied with by the plaintiffs on November 14, 1927. The Board also found that no intermediate switching charge should be made at Devils Lake, between the Great Northern Railway and [fol. 46] the M. St. P. S. S. M. Ry. through or via the Farmers Grain and Shipping Company. This was also complied with by plaintiffs.

9

Defendants deny paragraph 9 of said Bill, save and except that defendants allege that the Interstate Commerce Commission is conducting investigation under docket No. 17000, which includes class rates interstate and grain products rates interstate as well as other commodities, which really made its commencement in September 1925, at Chicago, Illinois, when the carriers had its hearing in Ex Parte 87 for the taking of evidence therein which sought an increase in rates including class rates. This rate increase sought was denied by the Interstate Commerce Commission on July 14th, 1926, 113 I. C. C. No. 3. It was found in this case as follows: 1st: Upon applications of the carriers in the western district seeking increases in freight rates, generally averaging in figures 5% with exceptions as to certain commodities, being predicated on the alleged existence of an emergency in that district, found that the showing as to emergency does not warrant the increases as sought.

Second. Record held open for further consideration in connection with No. 17000 and related proceedings. The Interstate Commerce Commission has held numerous hearings throughout the country since such time concerning class rates in docket 17000, part 2; but the examiners in charge of such hearings have not even yet announced a proposed report for the Interstate Commerce Commission; even after a proposed report is made by said examiner, all parties then must have time to file exception briefs, after which oral argument will be set and heard before the Interstate Commerce Commission and then and then only will said case be submitted and ready for decision by said Commission. In

docket No. 17000 the Interstate Commerce Commission are investigating the rate structures, including class rates, in the entire Western district, from Chicago to the North Dakota Montana state line, and southwestern territory under the Hoch-Smith Resolution, and necessarily are considering the relationships of intra state rates, and have [fol. 47] asked the cooperation of numerous state railroad commissions, including the commissioners herein. That it is the duty of said Commissioners under the laws of the State of North Dakota, as hereinbefore stated, to consult and cooperate with said Interstate Commerce Commission, but that thereby said Commissioners lose no part or portion of their jurisdiction and powers over intra state rates, and said Interstate Commerce Commission acquires thereby no part of the powers or jurisdiction of said Commissioners. The said Interstate Commerce Commission powers and jurisdiction being confined to violations of Section 13 of the Transportation Act proved and established in a hearing held before said Commission.

Neither the Interstate Commerce nor the Interstate Commerce Act require intra state class rates to be uniform with interstate class rates. Rate structures are constantly undergoing changes which are made from time to time by various orders of the Interstate Commerce Commission and respective state commissions. There is no established rate structure in the sense of a permanent rate structure.

10

Defendants admit paragraph 10 of said Bill save and except that the record in said No. 2255 which plaintiffs allege was held open by said Commissioners by its order dated September 2nd, 1927, is still held open for further hearing after the Interstate Commerce Commission renders its decision in docket No. 17000 concerning class rates, all pursuant to order of said Commissioners in connection with its said order of May 8, 1929, and further allege that the effective date of the rates in said order of May 8th, 1929, is now July 12, 1929.

11

Defendants deny the first paragraph of paragraph 11 of said bill and in respect thereto allege that the said order

of May 8th, 1929, provides for terminal jobbing intrastate class rates, affecting seventeen cities in the state of North Dakota, viz: Bismarck, Carrington, Devils Lake, Dickinson, Drake, Fairmount, Fargo, Grand Forks, Jamestown, Mandan, Max, Minot, New Rockford, Oakes, Valley City, Wahpeton and Williston; that these cities by reason of their location and their distributing trade are entitled to [fol. 48] this classification concerning intrastate rates. That these cities constitute only a small proportion of the total number of cities in the State of North Dakota and relatively have a smaller total population than the balance of the cities. That these jobbing intrastate rates, if made effective, so as to remove present discrimination existing against North Dakota jobbing centers, will provide a greatly increased jobbing tonnage from these jobbing towns which they do not now possess by reason of the discrimination now existing. That these terminal jobbing centers under the prescribed jobbing class rates can send and will send tonnage under class rates to all parts of the state and will not be confined to distances under 160 miles as to the major portion of such tonnage.

Defendants deny the second paragraph of said paragraph 11 of said bill for the reason that they allege that the prescribed jobbing class rates intrastate in North Dakota will not be 10% less than the jobbing class rates interstate from Minnesota jobbing points into said State of North Dakota.

Concerning the third paragraph of said paragraph 11 of said bill, defendants deny same save and except in this respect concerning which they allege that plaintiffs admit that the intrastate jobbing class rates required by said order of May 8th, 1929, are somewhat higher than the said class rates interstate from Minneapolis, St. Paul and Duluth, to North Dakota points, for some distances over 230 miles and for classes 5, b, c, d and e; That all movements interstate under said class rates to North Dakota points from Duluth, for instance, must move at least to enter the State of North Dakota a distance of at least 252 miles to Fargo, 295 miles to Grand Forks, 236 miles to Wahpeton; from Minneapolis at least 232 miles to Fargo, 307 miles to Grand Forks, and 205 miles to Wahpeton; that the general mileage distances from the Eastern border of the State of

North Dakota to its western border are substantially as follows: Grand Forks to Fort Buford, North Dakota, main line, 348 miles; Fargo to Beach, north Dakota, main line 374 miles.

Concerning the fourth paragraph of said paragraph 11 of said bill defendants deny the result alleged in the first [fol. 49] sentence thereof and in respect thereto allege that Minneapolis and other jobbing centers in Minnesota enjoy a lower scale of class rates intra state for 150 miles than the said Fargo scale applied to Minnesota points from Fargo for 150 miles applied interstate and lower than the jobbing class rates prescribed in said order of May 8th, 1929, for points intra state in North Dakota, 150 miles from Fargo; this applies generally speaking for any distance up to 360 miles, as shown by Exhibit "A" hereto attached and made part hereof.

Concerning the fifth paragraph of said paragraph 11 of said bill, defendants deby same save and except in this respect concerning which they allege that the State of Montana has in effect jobbing class rates intrastate on a much lower basis than the Montana intra state class rates or the Montana North Dakota interstate scale, and there are jobbing class rates between North Dakota points such as Fargo, Grand Forks, Bismarck, Minot, etc., and Montana points that are lower than the general distance scale applying for miscellaneous movement between North Dakota points and Montana points, and that therefore the comparison made by the plaintiffs of the present class rates intra state with the existing general class rates interstate is not apropos, the issue herein.

Concerning the sixth paragraph of said paragraph 11 of said bill, defendants deny same save and except as hereinbefore defendants have alleged concerning the relationship of both intra state and interstate class rates as now existing. See paragraph 8 hereof.

Defendants deny the seventh paragraph of 11 of said bill.

Defendants deny paragrap 8 of paragraph 11 of said bill and in respect thereto allege that the interstate and intra state class rates are neither interrelated or interdependent. See Exhibit "A" attached.

Defendants deny paragraph 8 of paragraph 11 of said bill and in respect to all of said paragraph 11 and to all of said bill allege:

That the order complained of will not discriminate against localities in other states but will tend to relieve discrimination that already exist- against North Dakota [fol. 50] jobbing points by reason of lower intrastate class rates that exist in neighboring states, which condition is recognized by the interstate commerce commission in investigation and suspension docket 3018, reported in 141 I. C. C. 487 in which the Interstate Commerce Commission made the following finding:

"Intrastate class rates in North Dakota are higher than in the neighboring states of Minnesota, Nebraska, Iowa, and Wisconsin, and in South Dakota, east of the Missouri River. Taking the average of the first four classes for one hundred miles and letting the North Dakota rates represent 100% the percentages for the other states in the order named would be 70.1, 80, 55.6, 75.7 and 84.6%. The record does not show what the relationship would be to the rates in the remainder of South Dakota, or in Montana or in Wyoming."

The order complained of provides for terminal basic rates in North Dakota, for seventeen cities as jobbing centers and readjusts class rates for joint line hauls with a charge of an arbitrary following decision of the Interstate Commerce Commission, and also adjust single line class rates between such jobbing points in North Dakota and other North Dakota points. After that adjustment becomes effective, the class rates in North Dakota will still be higher than intrastate class rates of Minnesota, Nebraska, Iowa, Wisconsin, and eastern South Dakota.

12

Defendants admit paragraph 1 of paragraph 12 of said bill, save and except that the power and authority of the Interstate Commerce Commission is only such as it possesses under Section 13 of the said Transportation Act; in respect thereto said defendants allege that all matters involved in the subject matter of this said Bill of plain-

tiffs can be found and determined in the said proceeding pending before said Interstate Commerce Commission, in which said commission has full and complete jurisdiction to award relief as may be required, under the circumstances shown, and that until said Commission has acted and found [fol. 51] upon the facts and such subject matter this Court is without jurisdiction to anticipate by injunctive relief the decision or findings of said Commission, and there is, therefore, presented upon the whole Bill herein both lack of jurisdiction and want of equity by reason whereof said Bill should be forthwith dismissed, and defendants herein so move and request.

Concerning the second paragraph of paragraph 12 of said bill defendants deby same, and in respect thereto allege that the complainants will not suffer irreparable injury in being compelled to put into effect intrastate class rates in North Dakota that more nearly approximate intrastate class rates in neighboring territories; that if an injunction or restraining order against the order of the Railroad Commission of the State of North Dakota, which is complained of, is granted, the consumers of North Dakota will suffer irreparable injury in this; that the consumers ultimately pay the freight. If lower rates are found justified by the Interstate Commerce Commission, no refunds can be made to the consumers. If any refunds are made, they will be made to retailers who have already passed on the freight charges to the people of the State.

Furthermore, the growth and development of jobbing points are dependent largely upon freight rates, and no reparations can be made for loss of business or retardment of development.

Defendants further allege that said complainants have and possess a full and complete and adequate remedy at law concerning the injury or loss or damage, if any, of which they complain, in the state Courts of North Dakota, with full right of appeal from the decision complained of with rights of a speedy hearing and decision and full and complete means and methods of staying the application of the rates concerning which complaint is made, and that complainant's bill presents entirely want of equity for [fol. 52] granting or allowance of any preliminary re-

straining order, interlocutory injunction or injunction of any kind.

Wherefore the defendants pray that plaintiffs' complaint be in all things dismissed, and that relief therein prayed for be denied.

Dated this 1st day of July 1929.

Board of Railroad Commissioners of the State of North Dakota and C. W. McDonnell, Fay Harding, and Ben C. Larkin, as Members of said Board, by James Morris, Attorney General and Attorney for said Board. H. A. Bronson, Special Assistant Attorney General.

[fol. 53] *Duly sworn to by James Morris. Jurat omitted in printing.*

[fol. 54] EXHIBIT A TO ANSWER

A—Fargo Scale.
B—Board of Railroad Comm'rs' Scale.
C—Minnesota Scale.

	Miles	Classes 1	2	3	4	5	A	B	C	D	E
A	25	30	33	27	21	14	17	13	11	9	7
B	25	27	22	18	15	11	12½	10	8	7	6
C	25	25	21	17½	15	11	12½	9	7½	6½	5
A	50	49	42	34	27	18	21	16	13	11	9
B	50	43	36	27	22	17	17	15	13	10	8
C	50	31½	26	21	16	12½	14½	11	10	8	7
A	80	58	49	41	32	21	25	19	16	13	10
B	80	54	45	36	27	22	22	19	17	13	11
C	80	40½	34	27½	20½	16	18½	14	12	10½	8
A	100	64	54	45	35	23	28	21	17	14	12
B	100	59	51	39	30	23	23	21	18	14	13
C	100	47	38½	31	23	19	21	16	14	11½	9
A	130	73	62	51	40	26	31	24	20	16	13
B	130	67	58	44	35	27	27	23	21	17	14
C	130	55½	46½	37	28	22½	25	19½	16	14	11
A	150	79	67	55	43	28	34	26	21	17	14
B	150	73	62	48	37	29	29	27	22	18	15
C	150	61	51	40½	31	25	28	21	18½	15½	12
A	200	94	80	66	52	34	40	31	25	21	17
B	200	86	74	58	44	35	35	30	27	21	18
C	200	76½	64	51	38½	30½	34½	26½	23	19½	15½

	Miles	Classes 1	2	3	4	5	A	B	C	D	E
A	200	108	92	76	59	39	46	36	29	24	19
B	...	103	87	68	52	41	41	36	32	25	21
C	...	85	71	57	43	34	38½	29½	25½	21	17
A	300	116	99	81	64	42	50	38	31	26	21
B	...	114	97	75	58	45	45	40	35	27	23
C	...	91½	76	61	45½	36½	41½	32½	27½	23	18½
A	300	129	110	90	71	47	56	43	35	28	23
B	...	130	111	86	66	52	52	45	40	32	27
C	...	100½	83½	67	50	40	45	35	30½	25	20½

Authority: N. P. I. . C. No. 8419 and 8504.
G. N. I. C. C. A-6559.
Board of Railroad Commissioner's order in Cases 2255 and 2875.

[fol. 55] AFFIDAVIT IN SUPPORT OF DEFENDANTS' ANSWER

STATE OF NORTH DAKOTA,
County of Burleigh, ss:

E. M. Hendricks, being first duly sworn, deposes and says:

That he is a resident of the State of North Dakota, thirty-nine years of age, and for more than five years last past has been the freight rate expert for the Railroad Commission of the State of North Dakota, and as such expert was present at the hearings held in Cases Nos. 2255 and 2875 resulting in the Order complained of in this action.

That said hearings were had on October 20, 1926, December 14 to 17, inclusive, 1926, and March 19, 1928; that twenty-three witnesses were examined in said proceedings, including this affiant, N. E. Williams, Traffic Commissioner for the Fargo Chamber of Commerce, G. M. Springer, Traffic Manager for the North Dakota Fair Freight Rate Association and member of the firm Springer & Cadieux, Public Traffic Managers, T. A. Durrant, Traffic Commissioner of the Greater Grand Forks Traffic Association. The Railway Companies presented at least five witnesses [fol. 56] whose testimony is part of the record in this case. That these statements are made for the purpose of showing the amount of testimony presented and the magnitude of the proceedings had leading up to the Order complained of.

Affiant further states that many differences exist throughout the State of North Dakota and adjoining States between the rate levels of intrastate and interstate freight rates; that in I. & S. Docket 3018, 144 I. C. C. 487, the Interstate Commerce Commission refused to order increases in interstate class rates, many of which are lower than the class rates proposed by the Order complained of; that these interstate rates are generally lower than the class rates prescribed by the Interstate Commerce Commission in the case of Commercial Club of Fargo vs. A. W. Railway Company, et al., 98 I. C. C. 691.

Affiant further states that in his opinion as a traffic expert familiar with freight rates in the northwest that the freight rates that will become effective by virtue of the Order of the Railroad Commission of the State of North Dakota dated May 8, 1929, would not create a burden upon Interstate Commerce and would not be unjustly nor unlawfully discriminatory and would not result in undue or unreasonable advantage, preference or prejudice as between persons or localities in intrastate commerce on the one hand and interstate commerce on the other.

E. M. Hendricks.

Subscribed and sworn to before me this 21 day of June, 1929. Ella Brelje, Notary Public, Burleigh County, State of North Dakota. My Commission expires April 11, 1935.

[fol. 57] IN UNITED STATES DISTRICT COURT

AFFIDAVIT OF NEAL E. WILLIAMS—Filed July 2, 1929

STATE OF MINNESOTA,
County of Ramsey, ss:

Neal E. Williams, being first duly sworn, deposes and say:

That he is and has been Traffic Commissioner and traffic advisor to the shippers and receivers of freight in Fargo, North Dakota, and Moorhead, Minnesota, and other points in North Dakota and the Red River Valley of Minnesota since August 1st, 1921; that previous to that time he was

Assistant to Mr. A. E. Cooke, Assistant Chairman of the Western Trunk Line Committee in Chicago, Illinois; that during the past fifteen years of his life, with the exception of fourteen months in the United States Army, have been devoted to the study and application to actual practice of traffic and transportation problems; that on July 6, 1914 he entered the employ of the Minneapolis, St. Paul & Sault Ste Marie Railway Company at Superior, Wis., as Stenographer and Billing Clerk, one year later was made Chief Billing Clerk; that he left the employ of the Minneapolis, St. Paul & Sault Ste Marie Railway Company to enter the service of the Great Northern Railway Company as Chief Clerk in the General Agent's office on May 2nd, 1916; that on July 5, 1917 he was made City Contracting Freight Agent for the Great Northern Railway Company, Duluth, Minnesota, and entered the world war and upon honorable discharge from service returned to the Great Northern Railway Company as Chief Clerk to District Freight Agent, Portland, Oregon, April 1st, 1919 was promoted to Senior Contracting Freight Agent March 1st, 1920 at the expiration of Federal Control of railroads, and resigned this position on September 15, 1920 to attend University; that he has participated in hundreds of cases before the Interstate Commerce Commission in the past nine years and numerous cases before the Board of Railroad Commission, acting as both counsel and witness; that he is familiar with the cases here involved, Nos. 2255 and 2875, and that he acted as counsel and witness for the shippers and receivers at Fargo, N. D. He also acted as witness for the following cities in addition to Fargo; Grand Forks, Valley City, Jamestown, Bismarck, Mandan and Minot, as stated and outlined at page 15 of the record in Case No. [fol. 58] 2255.

Intrastate Freight Rates are Generally Less Than Interstate Freight Rates in Same General Territory

An examination of the intrastate and interstate freight tariffs applicable to class and commodity traffic discloses that in the Western District generally, that is the western section of the United States west of a line drawn from Chicago to St. Louis thence following the Mississippi River to New Orleans, La., that intrastate class freight rate

scales are generally lower than the interstate scales applicable in the same territory. This is likewise true of the so-called Southern Classification territory, that is the territory south of the Ohio River and east of the Mississippi River covered by the investigation of the Interstate Commerce Commission known as the Southern Class Rate Investigation cases, reported 100 I.C.C. 513, 109 I.C.C. 300, 113 I.C.C. 200 and 128 I.C.C. 567. The law does not require that intrastate rates shall be maintained on the exact level of interstae rates, but only that there shall not exist between the two a disparity so substantial as to operate as undue discrimination against and obstruction of interstate commerce (85 I.C.C.-66).

To illustrate the point clearly attention is directed to situation pictured below:

Great Northern Tariff 600-H, I.C.C. A-6559 effective July 31, 1928 provides the following interstate class rate scale from Minnesota or North Dakota points to South Dakota points:

Distance	Classes	1	2	3	4	5	A	B	C	D	E
100 Miles	Interstate...	65½	56½	45	35	26	28	23	20½	15½	14
	Compared with										
100 Miles	South Dakota E. Mo. River intrastate scale....	56	47	37	28	22½	22½	20½	17	14½	11

The same tariff provides the following interstate scale from North Dakota and South Dakota points to Minnesota points:

Distance	Classes	1	2	3	4	5	A	B	C	D	E
150 Miles	Interstate...	81	69	55	43	32½	34	29½	24½	10½	17
	Compared with										
150 Miles	Minnesota Intrastate	61	51	40½	31	25	28	21	18½	15½	12

[fol. 59] Minnesota Class Freight Rates Into North Dakota are Less for Equal Distances than Class Freight Rates Within North Dakota Fixed by North Dakota Board of Railroad Commissioners in This Case, No. 2255

Exhibit "A" attached hereto illustrates how class freight rates apply from certain Minnesota points to North

Dakota points and how these class freight rates compare with the new class freight rates fixed by North Dakota Board of Railroad Commissioners in this case, indicating that the new class freight rates fixed by North Dakota Board of Railroad Commissioners for intrastate application in North Dakota are on a higher level than the interstate class freight rates from certain Minnesota points to North Dakota points. The situation between St. Paul, Minn., and Edgeley, North Dakota, a distance of 351 miles with a first class rate of $1.26½ whereas the regular interstate scale for the distance would be $1.42½ compared with the situation between Fargo, North Dakota and Rider, North Dakota, a distance of 354 miles with a present first class rate of $1.42½ and a class freight rate fixed in this case of $1.28 or 1½¢ higher than the class freight rate from St. Paul, Minn., to Edgeley, North Dakota, for the same mileage block distance of 351 miles. This exhibit pictures practically maximum distances in North Dakota and practically maximum reductions under the North Dakota Board of Railroad Commissioner order in this case, thus demonstrating that the North Dakota Board of Railroad Commissioners have been very conservative in readjusting North Dakota intrastate freight rates.

North Dakota Class Freight Rates Into Minnesota are Much Higher Than Class Freight Rates Within Minnesota for Equal Distances

Moorhead, Minnesota is provided with a first class freight rate to Duluth, Minnesota, for the distance of 250.7 miles of 85¢, whereas Fargo, North Dakota, 251.9 miles from Duluth, Minnesota on direct line only 1.2 miles further distant as measured between freight depots is provided with a first class freight rate of $1.08, a difference over Moorhead, Minn., of 23¢ first class for a difference in distance of only 1.2 miles as measured between freight depots. This is simply but one illustration of disparity between state and interstate freight rates. Thousands of such disparities could be worked out and actually exist between interstate and intrastate freight rates on class and commodity traffic between North Dakota and Minnesota points. [fol. 60] The same situation is true in the so-called Fargo Zone extending under order of Interstate Commerce Com-

mission under case known generally as Fargo Rate Case 98, I. C. C. 691 about 150 miles (figured in rail miles) from Fargo, North Dakota, into Minnesota. Moorhead, Detroit Lakes, Wadena and other Minnesota cities in the so-called Fargo Zone take the so-called Fargo Scale or interstate scale, whereas other points within that zone take the Minnesota distance scale, which is approximately 40% less than the so-called Fargo Scale on class traffic. Freight tariffs covering these situations have been filed legally with both the Minnesota Railroad & Warehouse Commission and the Interstate Commerce Commission. The illustration of Moorhead, Minnesota versus Fargo, North Dakota to Minnesota point of Duluth, Minnesota is carried in Northern Pacific tariff No. 413-0 Interstate Commerce Commission No. 8504 filed effective July 11, 1928 and Northern Pacific Tariff No. 2323-H, Minnesota Railroad & Warehouse Commission No. 973, Interstate Commerce Commission No. 8419 filed effective September 15, 1927.

Present North Dakota Class Freight Rates Compared with Class Freight Rates in South Dakota East of Missouri River, Nebraska, Iowa, Minnesota, and Wisconsin

Exhibit "B" next attached compares present North Dakota intrastate class freight rates with intrastate class freight rates applicable in South Dakota east of Missouri River, in Nebraska, in Iowa, in Minnesota and Wisconsin indicating that North Dakota intrastate class freight rates in effect at this time are much in excess of intrastate class freight rates in neighboring states. This exhibit the Interstate Commerce Commission received in evidence in I. & S. Docket No. 3018 decided June 6, 1928 reported at 144 I. C. C. 487, where the Commission said:

"Intrastate class rates in North Dakota are higher than in the neighboring States of Minnesota, Nebraska, Iowa and Wisconsin, and in South Dakota east of the Missouri River. Taking the average of the first four classes for 100 miles and letting the North Dakota rates represent 100 per cent, the percentages for the other States in the order named would be 70.1, 80, 55.6, 75.7, and 84.6 per cent."

Reduction of Intrastate Class Freight Rates Does Not Necessarily Mean a Reduction in Intrastate Net Revenues

A reduction in intrastate class freight rates does not necessarily mean a reduction in intrastate net revenues. North Dakota cities if placed in a position of being more able to meet competition from without the state will return the rail carriers serving the state additional volume of [fol. 61] freight traffic with increased intrastate revenue just in proportion to the relief granted such cities, thus no irreparable injury or material revenue loss will result to carriers because of readjustment of North Dakota intrastate freight rates for the purpose of removing unjust discriminations as between North Dakota cities and fixing a reasonable per se level of intrastate freight rates putting North Dakota more nearly on a parity with intrastate freight rates in states surrounding North Dakota.

North Dakota cities, firms and individuals will suffer irreparable damage if denied immediate relief granted as result of North Dakota Board of Railroad Commissioners investigation and order in connection with class freight rates involved in this case. North Dakota cities, firms and individuals are not only in competition with cities from without the state in the conduct and development of commerce but actually compete with each other in intrastate commerce. (See Transcript and Cross-examination Williams by Mr. Hagman at pages 280, 281 and 282.) The order of the Board of Railroad Commissioners in Case No. 2255 and Case No. 2875 involved is intended to relieve and adjust inequalities in the freight rate situation as between cities within the State of North Dakota and no bond intended to protect shippers and receivers of freight who actually pay the freight charges through process of refund, can possibly protect the growth and development of North Dakota cities.

Neal E. Williams.

Subscribed and sworn to before me this 2nd day of July, 1929. Jennette M. Dailey, Notary Public, Ramsey County, Minn. My commission expires March 6, 1934. (Seal.)

Hotel Lowry, St. Paul.

[File endorsement omitted.]

[fol. 62] EX. "A" TO AFFIDAVIT OF WILLIAMS

Statement Illustrating How Terminal Rates Apply from St. Paul-Minneapolis-Duluth, Minn., to North Dakota Points and How These Terminal Rates Compare with the New Terminal Rates Fixed by North Dakota Board of Railroad Commissioners in This Case

Between	And	Miles	Present terminal rate, 1st class	Interstate distance scale, 1st class
St. Paul, Minn.	Edgeley, N. D.	351	$1.26½	$1.42½
St. Paul, Minn.	Englevale, N. D.	320	1.16	1.32½
St. Paul, Minn.	McKenzie, N. D.	426	1.49	1.66
St. Paul, Minn.	Brinsmade, N. D.	442	1.55	1.70
Duluth, Minn.	Leal, N. D.	390	1.29	1.54
Duluth, Minn.	Drake, N. D.	471	1.67	1.79

Between	And	Miles	Present 1st class rate	Proposed 1st class rate
Fargo, N. D.	Rider, N. D.	354	$1.42½	$1.28
Fargo, N. D.	South Heart, N. D.	319	1.32½	1.19
Fargo, N. D.	Golva, N. D.	387	1.54	1.39
Fargo, N. D.	Beach, N. D.	374	1.49	1.34
Fargo, N. D.	Ft. Buford, N. D.	375	1.49	1.34
Fargo, N. D.	Killdeer, N. D.	322	1.33½	1.20

Authorities for Rates:

G. N. Ry. N. D. R. C. No. 93.
M., St. P. & S. S. M. Ry. I. C. C. No. 6286.
G. N. Ry. I. C. C. A-6559.
N. P. Ry. I. C. C. No. 8504.

(Here follows Exhibit "B," side folios 63, 64, 65, 66, 67, 68, 69, 70, 71, and 72)

[fol. 73] IN UNITED STATES DISTRICT COURT

[Title omitted]

AFFIDAVIT OF T. A. DURRANT—Filed July 2, 1929

STATE OF MINNESOTA,
County of Ramsey, ss:

T. A. Durrant, being first duly sworn, deposes and says: That he is and has been traffic advisor to the shippers and receivers of freight in the cities of Grand Forks, North Da-

BE

INTERSTATE CO

I&S 3

STATEMENT SHOWIN G THE RELATIVELY HIGH

DISTANCE	SCALE	1	2	3
5 Miles	North Dakota	18½	15½	12
1 "	South Dakota E.Mo.Rvr	16	14	11
"	Nebraska	21	18½	15
"	Iowa	21	18	14
"	Minnesota	18½	15½	12
"	Wisconsin	18½	16	12
10 "	North Dakota	20½	16	13
"	South Dakota E.Mo.Rvr	20½	17½	14
"	Nebraska	23	19½	16
"	Iowa	22½	19½	15
"	Minnesota	20½	16	13
"	Wisconsin	21	18½	14
15 "	North Dakota	21	17½	14
"	South Dakota E.Mo.Rvr	25	20½	16
"	Nebraska	24½	20½	17
"	Iowa	24	20½	16
"	Minnesota	21	17½	14
"	Wisconsin	24½	20½	16
20 "	North Dakota	24½	21	17
"	South Dakota E.Mo.Rvr	27½	23	18
"	Nebraska	26	22	16
"	Iowa	25	21	16
"	Minnesota	22½	19	15
"	Wisconsin	27½	23	18
25 "	North Dakota	29½	24½	20
"	South Dakota E.Mo.Rvr	31½	26	21
"	Nebraska	27½	23	19
"	Iowa	25½	22	17
"	Minnesota	24½	20½	16
"	Wisconsin	28½	24½	19

EXHIBIT "B"

BEFORE THE
INTERSTATE COMMERCE COMMISSION
I&S 3018

WITNESS WILLIAMS EX.___

STATEMENT SHOWING THE RELATIVELY HIGH CHARACTER OF THE NORTH DAKOTA INTRASTATE RATES

SCALE	1	2	3	4	5	A	B	C	D	E	Average of first four classes	Percent of N.D. Scale first four classes
North Dakota	18½	15½	12	9	7	8½	7	5½	5	3½	13.7	100%
South Dakota E.Mo.Rvr	16	14	11	8½	7	7	5½	5	4	3	12.3	89.7%
Nebraska	21	18½	15½	12½	10	11	7	7	5½	3½	16.8	122.6%
Iowa	21	18	14	11	7½	7½	7½	6½	5½	4	16.0	116.7%
Minnesota	18½	15½	12	9	7	8½	7	5½	5	3½	13.7	100%
Wisconsin	18½	16	12	9	7	8½	7	5	4	3½	13.8	100.7%
North Dakota	20½	16	13½	10	8	9	7	6½	5	4	15.0	100%
South Dakota E.Mo.Rvr	20½	17½	14½	11	8½	8½	7	6½	5	4	15.8	105.3%
Nebraska	23	19½	16	14	10½	11½	8	7	6½	4	18.1	120.6%
Iowa	22½	19½	15½	11½	8	8	8	7	6	4½	17.2	114.6%
Minnesota	20½	16	13½	10	8	9	7	6½	5	4	15.0	100%
Wisconsin	21	18½	14	11	8½	10	7	6½	5	4	16.1	107.3%
North Dakota	21	17½	14	11	8½	10	8	7	5½	5	15.8	100%
South Dakota E.Mo.Rvr	25	20½	16	12	10	10	8½	7	6½	5	18.3	115.8%
Nebraska	24½	20½	17	14½	11	12	8½	7	6½	4	19.1	120.8%
Iowa	24	20½	16	11½	8	8½	8	7	6	4½	18.0	113.9%
Minnesota	21	17½	14	11	8½	10	7	7	5½	4	15.8	100%
Wisconsin	24½	20½	16	12	10	11	8½	7	5½	5	18.2	115.1%
North Dakota	24½	21	17	12	9	10½	9	8	6½	5	18.6	100%
South Dakota E.Mo.Rvr	27½	23	18½	14	11	11	10	8½	7	5½	20.7	111.2%
Nebraska	26	22	18½	16	11½	12½	9	8	7	4	20.6	110.7%
Iowa	25	21	16½	12½	8½	9	8½	7½	6½	5	18.7	100.5%
Minnesota	22½	19	15½	11½	9	10½	8	7	5½	5	17.1	91.9%
Wisconsin	28½	23	18½	14	11	12½	10	7	6½	5½	20.7	111.2%
North Dakota	29½	24½	20½	15½	12	12	11	9	8	6½	22.5	100%
South Dakota E.Mo.Rvr	31½	26	21	16	12½	12½	11	10	8½	6½	23.6	104.8%
Nebraska	27½	23	19½	16	12	14	10	8½	7	5	21.5	95.5%
Iowa	25½	22	17	13	9	9	9	7½	6½	5	19.3	85.7%
Minnesota	24½	20½	16	12	10	11	8½	7	6½	5	18.2	80.8%
Wisconsin	28½	24½	19½	14½	11½	12½	10½	8	7	6½	21.7	96.4%

Sheet No. 2

INTRASTATE SCALE COMPARISONS:

DISTANCE	SCALE	1	2	3	4	5	A	B	C	D	E	Average of first four classes	Percent of North Dakota Scale first four classes
ALL CLASS RATES IN NORTH DAKOTA ARE SUBJECT TO RULE No. 275 UP TO THE 25 MILE BLOCK - Rule No. 275 is minimum class rate rule as follows:													
	Classes.....	25	21	17½	15	11	12½	9	7½	6½	5	19.6	
No rate shall be applied on any traffic moving under class rates lower than the amount in cents per 100 pounds for the respective classes as shown above.													
30 Miles	North Dakota	33⅓	29⅓	23	17	14	14	12	11	8	6½	25.7	100%
" "	South Dakota E. Mo. Rvr.	34	28⅓	22⅓	17	14⅓	14⅓	11⅓	10⅓	9	7	25.5	99.2%
" "	Nebraska	29⅓	25	20⅓	17⅓	13⅓	14⅓	10⅓	8⅓	7	5	23.1	69.6%
" "	Iowa	26⅓	23	18	13⅓	9⅓	9⅓	9⅓	8	7	5½	20.2	78.5%
" "	Minnesota	25⅓	21	17	12⅓	10⅓	11⅓	9	8	7	5½	19.0	73.9%
" "	Wisconsin	30⅓	25½	20½	15½	12	13⅓	10½	8	7	6½	23.0	89.4%
35 Miles	North Dakota	38⅓	32½	26	20½	15½	15½	14	12	9	8	29.3	100%
" "	South Dakota E. Mo. Rvr.	37	31⅓	25	18⅓	15⅓	15⅓	12½	11½	10	7	26.0	95.5%
" "	Nebraska	30½	26	21	18½	14	15½	11	9	8	5½	24.0	81.9%
" "	Iowa	27⅓	23½	18½	14	10	10	10	8½	7	5½	20.6	70.9%
" "	Minnesota	27⅓	22⅓	18½	13⅓	11	12	10	8	7	5½	20.5	69.9%
" "	Wisconsin	31⅓	26⅓	20½	16	12½	14	11	8½	7	6½	23.6	80.5%
40 Miles	North Dakota	41½	35	27½	21	17	17	14	12	9	8	31.2	100%
" "	South Dakota E. Mo. Rvr.	39⅓	33	26⅓	20½	16	16	14⅓	11½	10½	8½	29.8	95.5%
" "	Nebraska	32⅓	27⅓	22⅓	19⅓	14⅓	13	11⅓	10	8	5⅓	25.5	81.7%
" "	Iowa	28⅓	24⅓	19	14⅓	10	10	10	8½	7	6	21.6	69.2%
" "	Minnesota	28⅓	24	19½	14⅓	11⅓	12½	10⅓	8⅓	7	6½	21.6	69.2%
" "	Wisconsin	33	26	22	16	13⅓	14⅓	11⅓	9	7	7	24.7	79.1%
45 Miles	North Dakota	44⅓	37½	29½	23	18½	18½	15½	14	11	9	33.8	100%
" "	South Dakota E. Mo. Rvr.	41⅓	34	26⅓	20⅓	16	16	14⅓	12	10½	8½	30.6	90.5%
" "	Nebraska	33⅓	28½	24	20⅓	15½	17	11⅓	10½	8⅓	5⅓	26.6	78.6%
" "	Iowa	29⅓	25	20	15	10⅓	10½	10⅓	9	7½	6	22.3	65.9%
" "	Minnesota.	30⅓	25	20½	15½	12	13⅓	10⅓	9	8	6½	22.8	67.4%
" "	Wisconsin	34	29½	23	17	14	15⅓	12	9	8	7	25.8	76.3%
50 "	North Dakota	47½	39½	30½	24½	18½	18½	17	14	11	9	35.5	100%
" "	South Dakota E. Mo. Rvr.	43	36	28	21	17	17	15½	12½	11	8½	32.0	90.1%
" "	Nebraska	35	29½	24½	21	16	17½	12	10⅓	9	6⅓	27.5	78.5%
" "	Iowa	30½	25⅓	20⅓	15⅓	11	11	11	9	7½	6½	23.0	64.7%
" "	Minnesota	31⅓	26	21	16	12½	14½	11	10	8	7	23.6	66.4%
" "	Wisconsin	36	30½	24	17½	14⅓	16	12½	10	8	7	27.0	76.0%

Sheet No. 3.

INTRSTATE SCALE COMPARISONS

DISTANCE	SCALE	1	2	3	4	5	A	B	C	D	E	Average of First Four Classes	Percent of North Dakota scale first four classes
55 Miles	North Dakota	50½	43	33½	26	20½	20½	18½	15½	12	11	38.2	100%
" "	South Dakota E.Mo.Rvr	43½	37	28½	22	17	17	16	12½	11	9	32.7	85.6%
" "	Nebraska	36½	31	25½	22	16	18½	12½	11	9	6½	28.7	75.1%
" "	Iowa	31	26	20½	15½	11	11	11	9½	7½	6½	23.2	60.7%
" "	Minnesota.	33½	28	22	16	13½	15½	11½	10	6½	7	24.8	64.9%
" "	Wisconsin	37	31½	25	19	14½	16	12½	10½	8	7	28.1	73.5%
60 Miles	North Dakota	53½	45½	35	27½	21	21	18½	17	12	11	40.3	100%
" "	South Dakota E.Mo.Rvr	45	38½	29½	22½	16½	18½	16	14	11½	9	33.8	83.6%
" "	Nebraska	38½	32½	26½	23	17	19	13½	11½	10	7	30.1	74.6%
" "	Iowa	31½	27	21	16	11½	11½	11½	9½	8	6½	23.8	59.0%
" "	Minnesota	34½	29½	23	17½	14	16	12	10½	6½	7	26.1	64.7%
" "	Wisconsin	38½	33	25½	19½	15½	17	13½	10½	6½	8	29.1	72.2%
65 Miles	North Dakota	55	47½	36½	27½	21	21	20½	17	14	11	41.6	100%
" "	South Dakota E.Mo. Rvr	47	39½	31	23	18½	18½	16	14½	11½	10	35.1	84.3%
" "	Nebraska	39½	33½	28	24	17½	20½	14	12	10	7	31.2	75.0%
" "	Iowa	32½	27½	21½	16	11½	11½	11½	10	8	7	24.3	58.4%
" "	Minnesota	36½	30½	24½	18½	14½	16	12½	11	9	7	27.5	66.1%
" "	Wisconsin	39½	34	26½	20½	16	17½	14	11	8½	8	30.1	72.3%
70 Miles	North Dakota	56½	47½	36½	29½	23	23	20½	17	14	11	42.3	100%
" "	South Dakota E.Mo.Rvr	48	39½	31½	24	19½	19½	17	14½	12	10	35.7	84.3%
" "	Nebraska	41½	35	28½	25	19	20½	14½	12	10½	7	32.5	76.6%
" "	Iowa	33	28	22	16	11½	11½	11½	10	8	7	24.7	58.3%
" "	Minnesota	38	31½	25	19	15½	17	13½	11½	10	7	28.3	66.9%
" "	Wisconsin	41½	35	27½	20½	16	19	14½	11	9	8½	31.1	73.5%
75 Miles	North Dakota	57½	48½	38½	29½	23	23	20½	17	14	12	43.5	100%
" "	South Dakota E.Mo.Rvr	49	41½	32½	25	20½	20½	17	15½	12	10	37.0	85%
" "	Nebraska	43	36½	29½	25½	19½	21	15½	12½	11	7	33.6	77.2%
" "	Iowa	33½	28½	22½	16½	11½	12	11½	10	6½	7	25.2	57.9%
" "	Minnesota	38½	33	26	19½	16	17½	14	11½	10	8	29.2	67.1%
" "	Wisconsin	43	36	28½	21	17	19½	15½	11½	9	8½	32.1	73.7%
80 Miles	North Dakota	59½	50½	39½	30½	24½	24½	21	16½	14	12	45.0	100%
" "	South Dakota E.Mo.Rvr	50½	43	34	25½	20½	20½	17½	15½	12½	10½	38.2	84.6%
" "	Nebraska	44½	38	31	26½	20½	22	16	13½	11	7	35.0	77.7%
" "	Iowa	34	29	22½	17	11½	12½	11½	10½	8½	7	25.6	56.8%
" "	Minnesota	40½	34	27½	20½	16	18½	14	12	10½	8	30.6	68.0%
" "	Wisconsin	43½	37	29½	22	17½	20½	15½	12	10	8½	33.0	73.3%

Sheet No. 4

INTRASTATE SCALE COMPARISONS

DISTANCE	SCALE	1	2	3	4	5	A	B	C	D	E	Average of first four classes	Percent of North Dakota scale first four classes
85 Miles	North Dakota	61	52	39½	30½	24½	24½	21	16½	15½	12	45.7	100%
" "	South Dakota E.Mo.Rvr	52	43½	34	26	21	21	18½	16	12½	10½	38.8	84.9%
" "	Nebraska	45½	38½	32½	27½	20½	23	16	14	11½	8	36.0	78.7%
" "	Iowa	34½	29½	23	17	12	12½	12	10½	8½	7	26.0	56.8%
" "	Minnesota	42	35	28	21	17	19	14½	12½	10½	8½	31.5	68.9%
" "	Wisconsin	45	38½	30½	22½	16½	20½	16	12	10	9	34.1	74.6%
90 Miles	North Dakota	62½	53½	41½	32½	24½	24½	21	18½	15½	12	47.5	100%
" "	South Dakota E.Mo.Rvr	53½	45	34	26½	21	21	18½	16	14	11	39.7	83.5%
" "	Nebraska	47½	40	33	28½	21	24	16	14	12	8	37.2	78.3%
" "	Iowa	35	30	23½	17½	12	13	12	11	9	7	26.5	55.7%
" "	Minnesota	43½	36½	29½	22	17½	19½	15½	13½	11	8½	32.8	69.0%
" "	Wisconsin	47	39½	31	23	19	21	16	12½	10½	9	34.1	71.7%
95 Miles	North Dakota	64	55	43	32½	26	26	23	20½	15½	12	48.6	100%
" "	South Dakota E.Mo.Rvr	55	47	36	27½	22	22	19½	16	14	11	41.3	84.9%
" "	Nebraska	46½	41½	34	29½	22	24½	17	14½	12	8½	38.3	78.8%
" "	Iowa	36	30½	24	18	12½	13½	12½	11	9	7	27.1	55.7%
" "	Minnesota	45	38	30½	22½	18½	20½	16	13½	11½	9	34.0	69.9%
" "	Wisconsin	48	40½	32½	24½	19½	22	17	12½	10½	10	36.3	74.6%
100 Miles	North Dakota	65½	56½	43	33½	26	26	23	20½	15½	14	49.6	100%
" "	South Dakota E.Mo.Rvr	56	47	37	28	22½	22½	20½	17	14½	11	42.0	84.6%
" "	Nebraska	50½	43	35	30½	22½	25	17½	15½	12½	8½	39.7	80.0%
" "	Iowa	36½	31	24½	16½	12½	13½	12½	11	9	7	27.6	55.6%
" "	Minnesota	47	36½	31	23	19	21	16	14	11½	9	34.8	70.1%
" "	Wisconsin	49	42	33	25	20½	22½	17	13½	11	10	37.2	75.0%
105 Miles	North Dakota	67	56½	44½	33½	27½	27½	23	20½	17	14	50.3	100%
" "	South Dakota E.Mo.Rvr	59	49	38½	29½	24	24	21	18½	15½	11½	44.0	87.4%
" "	Nebraska	52	43½	36½	31	23	26	18½	16	12½	9	40.7	80.9%
" "	Iowa	38	32	25	19	13	14½	13	11½	9½	7½	28.5	56.6%
" "	Minnesota	46	40	32½	24½	19½	22	17	14½	12	10	36.2	71.9%
" "	Wisconsin	50½	43	33½	25½	20½	22½	17½	13½	11	10½	38.1	75.7%
110 Miles	North Dakota	69	57½	45½	35	27½	27½	24½	21	17	14	51.7	100%
" "	South Dakota EMoRvr	59	49	38½	29½	24	24	21	18½	15½	11½	44.0	85.1%
" "	Nebraska	53½	45½	37	32½	24½	26½	19	16	13½	9	42.1	81.4%
" "	Iowa	36½	32½	25	19½	13½	15	13½	11½	9½	7½	28.8	55.7%
" "	Minnesota	50	41½	33	25	20½	22½	17½	15½	12	10	37.3	72.1%
" "	Wisconsin	52	43½	34	25½	20½	23	18½	14	11½	10½	38.7	74.8%

Sheet No. 5

INTRASTATE SCALE COMPARISONS

DISTANCE	SCALE	1	2	3	4	5	A	B	C	D	E	Average of first four classes	Percent of North Dakota Scale first four classes
115 Miles	North Dakota	70	59½	45½	35	27½	27½	24½	21	17	14	52.5	100%
" "	South Dakota E. Mo. Rvr	61	52	40	31	25½	25½	21	18½	16	12½	46.0	87.6%
" "	Nebraska	55	47	38½	33	25	27½	19½	16	14	9	43.3	82.4%
" "	Iowa	40	33½	25½	20	14	15½	14	11½	10	6	29.7	56.5%
" "	Minnesota	51	43	34	25½	20½	23	17½	15½	12½	10½	38.3	72.9%
" "	Wisconsin	52	44½	35	26	20½	24	18½	14	11½	10½	39.3	74.8%
120 Miles	North Dakota	71½	61	47½	36½	29½	29½	24½	21	17	14	54.1	100%
" "	South Dakota E. Mo. Rvr	61	52	40	31	25½	25½	21	18½	16	12½	46.0	85%
" "	Nebraska	56½	48	39½	34	25½	28	20½	17	14	10	44.5	82.2%
" "	Iowa	41½	34	26½	20½	14½	16	14	12	10½	8	30.6	56.5%
" "	Minnesota	52	43½	35	26	21	24	18½	16	13½	10½	39.1	72.2%
" "	Wisconsin	53½	45½	36	26½	21	24½	19	14½	11½	11	40.3	74.4%
125 Miles	North Dakota	73	62½	48½	36½	29½	29½	26	21	18½	15½	55.1	100%
" "	South Dakota E. Mo. Rvr.	64½	53½	43	32½	25½	25½	22½	20½	17	12½	48.3	87.6%
" "	Nebraska	57½	49	40½	34½	26	29½	20½	17½	14½	10	45.3	82.2%
" "	Iowa	43	34½	27	20½	15	16	14½	12½	10½	8½	31.2	56.6%
" "	Minnesota	54	45	36	27½	22	24½	19	16	13½	11	40.6	73.6%
" "	Wisconsin	55	46½	36½	27½	22	25	19½	14½	12	11	41.3	74.9%
130 Miles	North Dakota	74½	64	48½	38½	30½	30½	26	23	18½	15½	56.3	100%
" "	South Dakota E. Mo. Rvr.	64½	53½	43	32½	25½	25½	22½	20½	17	12½	48.3	85.7%
" "	Nebraska	59½	50½	41½	36	26½	29½	20½	17½	15½	10½	46.8	83.1%
" "	Iowa	43½	35½	27½	21	15½	16½	15	12½	11	8½	31.8	56.4%
" "	Minnesota	55½	46½	37	28	22½	25	19½	16	14	11	41.7	74.0%
" "	Wisconsin	56	47½	37	28	22½	25	19½	15½	12	11	42.1	74.7%
135 Miles	North Dakota	76	65½	50½	38½	30½	30½	27½	23	18½	15½	57.6	100%
" "	South Dakota E. Mo. Rvr.	67	56	45	33½	26½	26½	24	20½	17	14½	50.3	87.3%
" "	Nebraska	61	52	43	36½	27½	30½	21	18½	15½	10½	48.1	83.5%
" "	Iowa	45	36	28	21½	16	17	15½	13	11	9	32.6	56.5%
" "	Wisconsin	56½	48	38	28½	22½	25½	20½	15½	12½	11½	42.7	74.1%
" "	Minnesota	57	47½	38½	28½	23	25½	20½	17	14½	11½	42.8	74.3%
140 Miles	North Dakota	78	65½	52	39½	30½	30½	27½	23	18½	15½	58.7	100%
" "	South Dakota E. Mo. Rvr.	67	56	45	33½	26½	26½	24	20½	17	14½	50.3	85.6%
" "	Nebraska	62½	52½	43½	38	28	31	22	19	16	11	49.1	83.6%
" "	Iowa	46½	37	28½	22	16	18	15½	13½	11½	9½	33.5	57.0%
" "	Minnesota	58½	48½	38½	29½	24	26	20½	17½	14½	11½	43.7	74.4%
" "	Wisconsin	57½	49	38½	29½	23	26	20½	16	12½	11½	43.6	74.2%

Sheet No. 6

INTRASTATE SCALE COMPARISONS

DISTANCE	SCALE	1	2	3	4	5	A	B	C	D	E	Average of First Four Classes	Percent of North Dakota Scale first four classes
145 Miles	North Dakota	79	67	52	39½	32½	32½	27½	24½	16½	15½	59.3	100%
" "	South Dakota E.Mo.Rvr.	70	59	47	34½	28	28	25½	21	16½	14½	52.6	88.7%
" "	Nebraska	64	54	45	38½	28½	32½	22½	19½	16	11	50.3	84.8%
" "	Iowa	47½	38	29½	23	16½	18½	16	13½	11½	9½	34.5	58.1%
" "	Minnesota	60½	50	40	29½	24½	26½	21	18½	15½	12	45.0	75.8%
" "	Wisconsin	59	50	39½	29½	24	26½	20½	16	12½	11½	44.5	75.0%
150 Miles	North Dakota	81	69	53½	41½	32½	32½	29½	24½	20½	17	61.2	100%
" "	South Dakota E. Mo. Rvr.	70	59	47	34½	28	28	25½	21	16½	14½	52.6	85.9%
" "	Nebraska	65½	56	45½	39½	29½	33	23	19½	16	11	51.6	84.3%
" "	Iowa	48½	38½	29½	23½	17	19	16	14	11½	10	35.0	57.1%
" "	Minnesota	61	51	40½	31	25	28	21	18½	15½	12	45.6	74.6%
" "	Wisconsin	60½	51	40	29½	24	26½	21	16	13½	12	45.2	73.8%
155 Miles	North Dakota	82	70	55	41½	33½	33½	29½	24½	20½	17	62.1	100%
" "	South Dakota E.Mo.Rvr.	72½	60½	49	36½	29½	29½	25½	22½	16½	14½	54.6	87.9%
" "	Nebraska	67	57	47	40	30½	33½	24	20½	17	11½	52.7	84.8%
" "	Iowa	50	39	30	24	17½	19½	16½	14½	12	10	35.7	57.4%
" "	Minnesota	63	52	42	31½	25½	28½	22	19	16	12½	47.1	75.8%
" "	Wisconsin	61	52	40½	30½	24½	27½	21	16	13½	12	46.0	74.0%
160 Miles	North Dakota	83½	71½	55	43	33½	33½	29½	26	20½	17	63.2	100%
" "	South Dakota E.Mo.Rvr.	72½	60½	49	36½	29½	29½	25½	22½	18½	14½	54.6	86.4%
" "	Nebraska	69	58½	48	41½	31	34	24½	20½	17	11½	54.2	85.7%
" "	Iowa	51	40	30½	24½	18	20½	17	14½	12	10½	36.5	57.7%
" "	Minnesota	64½	53½	43	32½	25½	29½	22½	19½	16	12½	48.3	76.4%
" "	Wisconsin	63	52½	41½	31	25	26	22	17	14	12	46.7	73.8%
165 Miles	North Dakota	85	73	56½	43	33½	33½	30½	26	20½	17	64.3	100%
" "	South Dakota E.Mo.Rvr.	75	63	50½	38	31	31	26½	22½	20½	16	56.6	88.0%
" "	Nebraska	70	59½	49	42	31½	35	24½	21	17½	12	55.1	85.6%
" "	Iowa	52	40½	31½	25	18½	20½	17	15	12½	10½	37.2	57.8%
" "	Minnesota	66	55	43½	33	26	29½	23	20½	16	13½	49.3	76.6%
" "	Wisconsin	63	53½	42	31½	25	28½	22	17	14	12½	47.5	73.8%
170 Miles	North Dakota	87	73	57½	44½	35	35	30½	26	21	17	65.5	100%
" "	South Dakota E.Mo.Rvr.	75	63	50½	38	31	31	26½	22½	20½	16	56.6	86.4%
" "	Nebraska	71½	61	50	43	32½	36	25	21	16½	12	56.3	85.9%
" "	Iowa	53½	41½	32½	25	19	21	17½	15½	12½	11	38.1	58.1%
" "	Minnesota	67½	56	45	34	26½	30½	24	20½	17	13½	50.6	77.2%
" "	Wisconsin	64½	55	43	32½	25½	29½	22½	17½	14	12½	48.7	74.3%

Sheet No.7

INTRASTATE SCALE COMPARISONS

DISTANCE	SCALE	1	2	3	4	5	A	B	C	D	E	Average of First Four Classes.	Percent of North Dakota Scale first four classes
175 Miles	North Dakota	88	74½	57½	44½	35	35	30½	26	21	16½	66.1	100%
" "	South Dakota E.Mo.Rvr.	78	65½	52	38½	31	31	28	24	20½	16	58.5	88.5%
" "	Nebraska	73	62	51	43½	33	36½	25½	22	18½	12½	57.3	86.6%
" "	Iowa	55	42½	32½	25½	19½	21½	18	15½	13	11	38.8	58.6%
" "	Minnesota	69	57½	46½	34½	27½	31	24½	20½	17	14	51.6	78.3%
" "	Wisconsin	65	55½	43½	33	26	29½	23	17½	14½	13½	49.2	74.4%
180 Miles	North Dakota	90	76	59½	45½	36½	36½	32½	27½	21	16½	67.7	100%
" "	South Dakota E.Mo.Rvr.	78	65½	52	38½	31	31	28	24	20½	16	58.5	86.4%
" "	Nebraska	74½	63	52	45	33½	37	26	22½	19	12½	56.6	86.5%
" "	Iowa	56	43	33	26	20	22	16½	16	13	11½	39.5	58.3%
" "	Minnesota	70½	59	47	35	28	31½	25	21	17½	14	52.6	77.9%
" "	Wisconsin	66	56½	44½	33½	26	29½	23	18½	14½	13½	50.1	74.0%
185 Miles	North Dakota	91½	78	61	45½	36½	36½	32½	27½	21	16½	69.0	100%
" "	South Dakota E.Mo.Rvr.	81	69	55	40	32½	32½	28	24	21	17	60.7	87.9%
" "	Nebraska	76	64½	53½	45½	34	38½	26½	23	19	12½	59.8	86.6%
" "	Iowa	57	43½	33½	26½	20½	22½	19	16	13½	11½	40.1	58.1%
" "	Minnesota	71½	60½	48	36	26½	32½	25	22	16½	14½	54.0	78.2%
" "	Wisconsin	67½	57	45	34	26½	30½	24	18½	14½	13½	50.8	73.6%
190 Miles	North Dakota	93	79	61	47½	36½	36½	32½	27½	23	18½	70.1	100%
" "	South Dakota E.Mo.Rvr.	81	67	55	40	32½	32½	28	24	21	17	60.7	86.5%
" "	Nebraska	78	66	54	47	35	38½	27½	23	19½	13½	61.2	87.3%
" "	Iowa	58½	44½	34	27	20½	23	19	16	14	11½	41.0	58.4%
" "	Minnesota	73½	61	49	36½	29½	33	25½	22	18½	14½	55.0	78.4%
" "	Wisconsin	69	58½	45½	34	26½	31	24½	19	15½	14	51.7	73.7%
195 Miles	North Dakota	94	81	62½	47½	38½	38½	33½	29½	23	18½	71.2	100%
" "	South Dakota E. Mo.Rvr.	83½	70	56	42	33½	33½	29½	25½	21	17	62.8	88.2%
" "	Nebraska	79	67½	55½	47½	36	39½	28	24	20½	13½	62.3	87.5%
" "	Iowa	59½	45	34½	28	21	23½	19½	16½	14	11½	41.7	58.5%
" "	Minnesota	74½	62½	50	38	29½	34	26	22½	19	15½	56.2	78.9%
" "	Wisconsin	69½	59	46½	34½	27½	31½	24½	19	15½	14	52.3	73.4%
200 Miles	North Dakota	96	82	64	48½	38½	38½	33½	29½	23	20½	72.6	100%
" "	South Dakota E. Mo. Rvr.	83½	70	56	42	33½	33½	29½	25½	21	17	62.8	86.5%
" "	Nebraska	81	69	56½	48½	36½	40	28½	24½	20½	14	63.7	87.7%
" "	Iowa	61	46	35	28½	21½	24½	20	16½	14½	12	42.6	58.6%
" "	Minnesota	76½	64	51	38½	30½	34½	26½	23	19½	15½	57.5	79.2%
" "	Wisconsin	70½	60½	47	35	27½	31½	25	19	16	14	53.2	73.2%

Sheet No. 8

INTRASTATE SCALE COMPARISONS

DISTANCE	SCALE	1	2	3	4	5	A	B	C	D	E	Average of First Four Classes	Percent of North Dakota Scale first four classes
205 Miles	North Dakota	97	82	64	46½	39½	39½	33½	29½	23	20½	72.8	100%
" "	South Dakota E.Mo. Rvr.	87½	74½	59	43½	34½	34½	31	26½	22½	18½	66.1	90.7%
" "	Nebraska	83½	71	56½	50½	38	42	29½	25	21	14½	65.8	90.3%
" "	Iowa	63	47½	36	29½	22½	25	20½	17½	15	13	44.0	60.4%
" "	Minnesota	78	65	52	38½	31	35	27½	24	19½	16	58.3	80.0%
" "	Wisconsin	72½	61	48½	36	27½	33	25½	19½	16	14½	54.5	74.8%
210 Miles	North Dakota	99	83½	65½	50½	39½	39½	35	30½	24½	20½	74.6	100%
" "	South Dakota E.Mo.Rvr.	87½	74½	59	43½	34½	34½	31	26½	22½	18½	66.1	88.6%
" "	Nebraska	83½	71	58½	50½	38	42	29½	25	21	14½	65.8	88.2%
" "	Iowa	63	47½	36	29½	22½	25	20½	17½	15	13	44.0	58.9%
" "	Minnesota	78	65	52	38½	31	35	27½	24	19½	16	58.3	78.1%
" "	Wisconsin	72½	61	48½	36	27½	33	25½	19½	16	14½	54.5	73.0%
215 Miles	North Dakota	100½	85	67	50½	39½	39½	35	30½	24½	20½	75.7	100%
" "	South Dakota E. Mo. Rvr.	87½	74½	59	43½	34½	34½	31	26½	22½	18½	66.1	87.3%
" "	Nebraska	87	73½	61	52	38½	43	30½	26	22	14½	68.3	90.2%
" "	Iowa	65½	49	37	30	23½	26	21	18	15½	13	45.3	59.8%
" "	Minnesota	79½	66	52½	39½	31½	36	28	24	20½	16	59.3	78.3%
" "	Wisconsin	74½	63	50	36	28	33½	26	20½	16	15½	55.8	73.7%
220 Miles	North Dakota	102	87	67	52	41½	41½	35	30½	24½	20½	77.0	100%
" "	South Dakota E. Mo. Rvr.	87½	74½	59	43½	34½	34½	31	26½	22½	18½	66.1	85.8%
" "	Nebraska	87	73½	61	52	38½	43	30½	26	22	14½	68.3	88.7%
" "	Iowa	65½	49	37	30	23½	26	21	18	15½	13	45.3	58.8%
" "	Minnesota	79½	66	52½	39½	31½	36	28	24	20½	16	59.3	77.0%
" "	Wisconsin	74½	63	50	36	28	33½	26	20½	16	15½	55.8	72.4%
225 Miles	North Dakota	103½	88	69	52	41½	41½	36½	30½	24½	21	78.1	100%
" "	South Dakota E. Mo. Rvr.	92	76½	61	45½	36½	36½	32½	28	24	18½	68.7	87.9%
" "	Nebraska	90	76½	62½	54	40½	45	31½	26½	22½	15½	70.7	90.5%
" "	Iowa	68	50½	38½	31	24½	27	22	19	16	13½	46.8	59.9%
" "	Minnesota	61	67½	54	40½	32½	36½	28½	24½	20½	16	60.7	77.7%
" "	Wisconsin	76½	65	51	36	28	34	26½	20½	17	15½	57.1	73.1%
230 Miles	North Dakota	105½	90	70	53½	43	43	36½	32½	26	21	79.7	100%
" "	South Dakota E.Mo.Rvr.	92	76½	61	45½	36½	36½	32½	28	24	18½	68.7	86.1%
" "	Nebraska	90	76½	62½	54	40½	45	31½	26½	22½	15½	70.7	88.7%
" "	Iowa	68	50½	38½	31	24½	27	22	19	16	13½	47.0	58.9%
" "	Minnesota	61	67½	54	40½	32½	36½	28½	24½	20½	16	60.7	76.1%
" "	Wisconsin	76½	65	51	36	28	34	26½	20½	17	15½	57.1	71.6%

Sheet No. 9

INTRASTATE SCALE COMPARISONS:

DISTANCE	SCALE	1	2	3	4	5	A	B	C	D	E	Average of first four classes	Percent of North Dakota Scale first four classes.
235 Miles	North Dakota	106	91½	70	53½	43	43	36½	32½	26	21	80.2	100%
" "	South Dakota E.Mo.Rvr	92	76½	61	45½	36½	36½	32½	26	24	18½	68.7	85.6%
" "	Nebraska	93	79	65	56	42	46½	33	26	23	16	73.2	91.2%
" "	Iowa	70½	52	39	32½	25	28	22½	19½	16	14	48½	60.4%
" "	Minnesota	82	69	55	41½	33	37	28½	25	20½	16	61.8	77.0%
" "	Wisconsin	78½	67	52	36½	28½	34½	27½	21	17½	16	58½	72.9%
240 Miles	North Dakota	108	91½	71½	55	43	43	36½	32½	26	21	81.5	100%
" "	South Dakota E.Mo.Rvr	92	76½	61	45½	36½	36½	32½	28	24	18½	68.7	84.2%
" "	Nebraska	93	79	65	56	42	46½	33	28	23	16	73.2	89.5%
" "	Iowa	70½	52	39	32½	25	26	22½	19½	16	14	48.5	59.5%
" "	Minnesota	82	69	55	41½	33	37	28½	25	20½	16	61.8	75.6%
" "	Wisconsin	78½	67	52	36½	28½	34½	27½	21	17½	16	58½	71.7%
260 Miles	North Dakota	114½	97	76	57½	45½	45½	39½	35	27½	23	86.2	100%
" "	South Dakota E.Mo.Rvr	96	81	64½	48	38½	38½	33½	29½	24	20½	72.3	83.8%
" "	Nebraska	99	83½	69½	59½	44½	49	34½	29½	25	17	77.8	90.2%
" "	Iowa	75	55	41½	34	27	30	24	20½	17	15	51.3	59.5%
" "	Minnesota	85	71	57	43	34	38½	29½	25½	21	17	64.0	74.2%
" "	Wisconsin	82	70	55	36½	29½	36	28½	22½	18½	16	60.8	70.5%
280 Miles	North Dakota	120	102	79	61	48½	48½	43	36½	29½	24½	90.5	100%
" "	South Dakota E.Mo.Rvr	99½	83½	67	50	40	40	34½	31	25½	20½	75.0	82.8%
" "	Nebraska	105½	89	73½	63	47½	52	37	31½	26	17½	82.7	91.3%
" "	Iowa	80	58½	43½	36	28½	32½	25	21½	18½	16	54.5	60.2%
" "	Minnesota	88	73½	59	44½	35	39½	31	26½	22	17½	66.2	73.1%
" "	Wisconsin	85	72½	56½	37	29½	37	29½	24	19½	17½	62.7	69.2%
300 Miles	North Dakota	126½	108	83½	64	50½	50½	44½	38½	30½	26	95.5	100%
" "	South Dakota E.Mo.Rvr	104	87½	70	52	42	42	36½	32½	26½	21	76.3	81.9%
" "	Nebraska	111	94	78	67	50	55½	38½	33½	28	19	87.5	91.6%
" "	Iowa	85	61	45½	38	30½	34	26½	23	19	16½	57.3	60.0%
" "	Minnesota	91½	76	61	45½	36½	41½	32½	27½	23	18½	68.5	71.7%
" "	Wisconsin	88	74½	59	38	29½	38	29½	25	20½	18½	64.8	67.6%

Sheet No. 10

INTRASTATE SCALE COMPARISONS

DISTANCE	SCALE	1	2	3	4	5	A	B	C	D	E	Average of First Four Classes	Percent of North Dakota Scale first four classes
320 Miles	North Dakota	132½	112½	87	67	53½	53½	45½	39½	32½	27½	99.7	100%
" "	South Dakota E.Mo.Rvr	108	90½	72½	54	43	43	36	32½	26	22½	81.2	81.4%
" "	Nebraska	117½	99½	82	70½	52½	56½	41½	35	29½	20½	92.3	92.5%
" "	Iowa	56½	62	47½	39½	32	35½	28	24½	20½	18½	58.8	58.9%
" "	Minnesota	94	78½	62½	47½	38	43	33	28½	24	19	70.6	70.8%
340 Miles	North Dakota	136½	117½	91½	70	55	55	48½	41½	33½	27½	104.3	100%
" "	South Dakota E.Mo.Rvr	112½	94	75	56	44½	44½	38½	33½	28	22½	84.3	80.8%
" "	Nebraska	123½	104½	86½	74½	55½	61	43	37	31	21	97.2	93.1%
" "	Minnesota	97	81	65	48½	36½	43½	34	29½	24½	19½	72.6	69.7%
" "	Iowa	88	64	46½	41	33½	37½	29½	25½	22	20	60.4	57.8%
360 Miles	North Dakota	144½	123½	96	73	57½	57½	50½	44½	35	29½	109.2	100%
" "	South Dakota E.Mo.Rvr	116	97	78	58½	47½	47½	40	34½	29½	24	87.3	79.9%
" "	Nebraska	129½	110	90½	78	58½	64½	45½	38½	32½	22	102.0	93.4%
" "	Iowa	89½	65½	50	43	35	38½	31	27½	23½	21	62.0	56.7%
" "	Minnesota	100½	83½	67	50	40	45	35	30½	25	20½	75.2	68.8%
380 Miles	North Dakota	151	128	99	76	61	61	53½	45½	36½	30½	113.5	100%
" "	South Dakota E.Mo.Rvr	120	101½	81	60½	48½	48½	42	36½	31	24	90.7	79.9%
" "	Nebraska	135½	115	95	81½	61	67½	47½	40½	34	23	106.7	94.0%
" "	Iowa	91½	67	52	48½	36½	40	33	29	25	23	63.6	56.0%
" "	Minnesota	103½	85½	69	52	41½	46½	36	31	26	20½	77.5	68.2%
400 Miles	North Dakota	156½	133½	105½	81	62½	62½	55	47½	36½	32½	119.1	100%
" "	South Dakota E.Mo.Rvr	124½	104	83½	62	50	50	44½	38	32½	25½	93.5	78.5%
" "	Nebraska	142	120	99	85	64	70½	50	43	35	24½	111.5	93.6%
" "	Iowa	92½	68½	53	45½	38	42	34	30½	26½	24½	64.8	54.4%
" "	Minnesota	106	88½	70½	52½	43	47½	37	31½	26½	21	79.3	66.5%

Tariff Authorities

GN Ry N. D. R. C. No. 78
C & N W GFD No. 9415-E, ICC No. 8899
C St P M & O Ry Co GFD No. 3970-H
E. B. Boyd ICC No. A-1626, Tariff 160-D
N. P. Ry MRC No. 879
C St P M & O GFD No. 4660-F.

Endorsed on face: "FILED JUL 2 1920. J.A.Montgomery, Clerk"

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kota, and East Grand Forks, Minnesota, since August 15th, 1923; that previous to that time he was traffic assistant in the Saint Paul Association of Public & Business Affairs, located in St. Paul, Minnesota, for approximately three years; and previous to that was in the employ of the Chicago, St. Paul, Minneapolis & Omaha Railway Company at St. Paul in the general freight department and in the office of the auditor of freight accounts; that during the last eight years of his employment there he was chief clerk to the auditor freight accounts; and during all of these years dealt with traffic and transportation matters; that he has participated in a number of cases before the Interstate Commerce [fol. 74] Commission and before the Board of Railroad Commissioners of North Dakota and the Minnesota Railroad & Warehouse Commission of Minnesota, acting as both counsel and witness; that he is familiar with the cases here involved, Nos. 2255 and 2875, and that he acted as counsel and witness for the shippers and receivers at Grand Forks. He also acted as a witness for the following cities in addition to Grand Forks: Fargo, Valley City, Jamestown, Bismarck, Manden and Minot, as stated at pages 8 and 13 of the record in Case 2255.

Facts Concerning the Present Adjustment of Freight Rates Within the State of North Dakota

The railroads of the United States filed applications with the Interstate Commerce Commission in the latter part of April, and in the early part of May, 1920, for increases in all freight rates, including class rates. The Interstate Commerce Commission rendered a decision in this case, Ex Parte 74, In the Matter of the Applications of Carriers in Official, Southern and Western Classification Territories for Authority to Increase Rates, 58 I. C. C. 220, and directed increases in the western group, which includes North Dakota, Minnesota, South Dakota, and a few other states. For instance, on class rates interstate in the western group they fixed the increase at 35% above the then prevailing rates.

The officials of the State of North Dakota, as evidenced by I. C. C. Docket 12085, reported in 61 I. C. C. 504, did not feel that the intrastate rates should be increased on account of their relatively high nature, and for the fact that no

hearings were held before the Board of Railroad Commissioners of the State of North Dakota to determine the reasonableness of the 35% increase in these state rates. There were only a few states in the Union that took the same position as did North Dakota. The carriers then filed with the Interstate Commerce Commission a petition for relief under Section 13 of the Interstate Commerce Act, and the case was submitted to the Commission April 22nd, 1921, and decided May 3rd, 1921, and the Interstate Commerce Commission ordered the same increases on North Dakota intrastate traffic as applied to interstate traffic.

On interstate traffic a downward revision was made in the freight rates in Reduced Rates, 1922, reported in 68 I. C. C. 676, in which class rates, for instance, were reduced 10%. [fol. 75] A like reduction was made in the class rates within the State of North Dakota, and today there is no class rate in effect in the State of North Dakota on the basis as ordered by the Interstate Commerce Commission in Docket 12085.

Further changes were made in the class rates interstate by the Interstate Commerce Commission in the Fargo Case, 98 I. C. C. 691, on both single and joint line traffic, and the interstate rates from Fargo into Minnesota, and from St. Paul, Minneapolis and Duluth and related points, and from Wisconsin points taking the same rates as either St. Paul, Minneapolis or Duluth, were changed as a result of that case to all points in Minnesota located 150 miles and less from Fargo, North Dakota. Before the decision in the Fargo Case, which was made by the Interstate Commerce Commission on June 2nd, 1925, the prevailing rates from Fargo to points in Minnesota requiring the movement of freight over two or three lines was a combination of local rates of each railroad. The Commission condemned that method, and ordered in rates for joint line hauls on the basis of the single line distance plus the following arbitraries in cents per 100 pounds:

Classes	1	2	3	4	5	A	B	C	D	E
Arbitraries	8	7	6	5	3	3	3	2	2	1

These arbitraries are the same that the Board of Railroad Commissioners in Case 2875 ordered into effect for state application on joint line traffic.

As a result of the Fargo Case changes in class rates were made to various North Dakota cities, including Grand Forks, Fargo, Valley City and Jamestown. Therefore, interstate rates to a large territory in Minnesota and North Dakota do not bear any relation to the rates as prescribed by the Interstate Commerce Commission in Ex Parte 74, 58 I. C. C. 200, or in Reduced Rates, 1922, 68 I. C. C. 676.

In Mason City Brick & Tile Company v. Director General, as Agent, Atchison, Topeka & Santa Fe Railway Company, et al., 107 I. C. C. 702, the Interstate Commerce Commission ordered a readjustment in rates from Mason City, Iowa, to points in Iowa Interstate, Nebraska, South Dakota [fol. 76] and Minnesota. This case was submitted December 13th, 1924, and decided on March 1st, 1926.

Changes in the brick rates were ordered by the Interstate Commerce Commission on February 17th, 1928, from Springfield and Heron Lake, Minnesota, to destinations in North Dakota in A. C. Ochs Brick & Tile Company et al. v. Chicago & North Western Railway Company et al., 139 I. C. C. 695. The rates published as a result of this order considerably reduced the rates to points in North Dakota.

The carriers voluntarily made adjustments in the rates from a large number of Iowa and Minnesota brick manufacturing plants, considerably reducing the rates to points in North Dakota east of the Missouri River, except from Mason City, Iowa, which point already enjoyed the lower basis of rates, Soo Line I. C. C. 6330, effective February 25th, 1929.

Adjustments have been made in the rates on various commodities, several of which were made voluntarily by the carriers, and others by order of the Board of Railroad Commissioners, since the decision of the Interstate Commerce Commission in North Dakota Rates, Fares and Charges, Docket 12085, 61 I. C. C. 504. In one of the cases here under attack, Case 2255, the rates on brick from Grand Forks and other manufacturing points in the state were ordered reduced by the Board of Railroad Commissioners, and the plaintiffs published said rates effective November 14th, 1927, in Great Northern Railway freight tariff N. D. R. C. No. 93.

The grain rates were brought under attack by the State Mill & Elevator Association and others, and the Board of Railroad Commissioners of this state ordered the rates

reduced intrastate for both single and joint line movement under Case No. 2375. The carriers contested this case through the District Court of Burleigh County, and that Court ordered the carriers to put the reduced rates into effect, which they did under date of January 20th, 1927. The carriers appealed from the decision of the District Court to the Supreme Court of the State of North Dakota, and the Supreme Court upheld the findings of the lower court, 219 N. W. 295.

The rates on reinforced concrete pipe within the State of North Dakota were ordered adjusted by the North Dakota Board of Railroad Commissioners in Case 2815, and the [fol. 77] carriers complied with that order by putting the new rates in effect March 1st, 1928, in Supplement 13 to Great Northern N. D. R. C. No. 93.

To get before the Court the picture of the general level of class rates, graphs of the first and fourth class rates are attached hereto, and marked Exhibits A and B. Exhibit A is a graph showing the level of the present North Dakota first class rates. It also shows the scale ordered into effect by the Board of Railroad Commissioners for single line application, which is shown by the line marked "90% Scale." For the information of the Court the South Dakota first class rates are shown and marked "South Dakota East of Missouri River Scale." The first class "Minnesota Scale" is also shown on this graph, and it will be noticed that all of the rates based upon the findings of the Board of Railroad Commissioners in Case 2255 beyond 50 miles are higher than the scales of Minnesota or South Dakota. This graph also shows that the North Dakota scale starts at 18½ cents; that the 90% scale ordered into effect by the Board starts at 16½ cents; that the South Dakota scale starts at 16 cent; and that the Minnesota scale starts at 18½ cents. There is, however, a minimum rate rule applying on both state and interstate traffic to the effect that no rate shall be applied on any traffic moving under class rates lower than the amount in cents per 100 pounds for the respective classes as shown below:

Classes	1	2	3	4	5	A	B	C	D	E
Cents	25	21	17½	15	11	12½	9	7½	6½	5

Therefore, shipments moving in either intrastate or interstate traffic would not enjoy anything lower on first class

traffic than 25 cents per 100 pounds. The 90% scale as ordered into effect by the Board of Railroad Commissioners on first class, as shown by the graph, is 25 cents at 22 miles. In Minnesota the 25 cents is reached at 25 miles. This graph also shows the high nature of even the 90% scale.

Exhibit B is a graph of the fourth class rates, and there is shown the same scales on that graph as on Exhibit A. It will be noted that the present North Dakota scale starts at 9 cents, the 90% scale ordered into effect by the Board at 8 cents, the South Dakota scale at 8½ cents, and the Minnesota scale at 9 cents. The minimum rate, however, on fourth class is 15 cents per 100 pounds. Therefore, no [fol. 78] fourth class rate could be applied lower than 15 cents.

A graph of the first class rate under the present North Dakota scale for 250 to 600 miles with the average first class rate between Minneapolis and North Dakota points for equal distances on the Great Northern, the Northern Pacific, and the Soo Line Railways is hereto attached as Exhibit C. The solid line marked No. 1 is the present North Dakota scale. The broken line marked No. 2 is the Great Northern Railway's Minneapolis rate. No. 3, broken line, is the Soo Line's Minneapolis rate, and the solid line, No. 4, is the Northern Pacific Railway's Minneapolis rate. It will be noticed that the North Dakota intrastate scale is considerably higher than are the scales that Minneapolis jobbers and manufacturers pay for the same amount of transportation within the State of North Dakota, further indicating that the discrimination against North Dakota jobbing towns is exceedingly pronounced.

Exhibit D attached hereto is a statement showing the rates published from Minneapolis, St. Paul and Duluth to various points in North Dakota contrasted with the regular distance rate from and to the points shown, and the present and proposed rates between North Dakota jobbing points and other points in North Dakota equidistant from the North Dakota jobbing points as Minneapolis, St. Paul and Duluth are from the North Dakota points shown. It is noted that Minneapolis, St. Paul and Duluth do not pay the regular interstate scale, but enjoy a scale approximately 10% lower than the interstate scale, and that if the jobbing towns in North Dakota are given like treatment that their

rates would be approximately on the same level mile for mile as Minnesota jobbing towns are given to points in North Dakota.

To make this absolutely clear, the rate from Minneapolis to Cooperstown for 346 miles is $1.28, whereas, if Minneapolis paid the regular interstate scale it would be $1.42. On the lower part of Exhibit D opposite the figure 1 is shown the present and proposed rates applying between Fargo and Medora, a distance of 349 miles, where Fargo is compelled to pay $1.42, the regular distance scale, which is the same as the regular interstate scale applying from Minnesota points to North Dakota points. In the decision [fol. 79] of the Board of Railroad Commissioners, the Fargo-Medora rate is ordered reduced to $1.28, which equals the adjustment that Minneapolis enjoys to Cooperstown for approximately the same mileage.

Exhibit E is a statement showing the relative level of interstate rates in North Dakota, Minnesota and South Dakota, and between Montana, Minnesota, North and South Dakota; also the Montana state rates and the Montana distributing or jobbing rates. The distance as shown on the exhibit from Minneapolis to Aberdeen is 285 miles. The Minneapolis first class rate is $1.15½. The South Dakota east of the Missouri River distance scale for 285 miles is $1.04, whereas, in North Dakota for the same distance, the first class rate is $1.21½. The intrastate class rates in South Dakota, it is noted, are lower than the interstate rates from Minneapolis, whereas, in North Dakota the contrary is the case. At the bottom half of Sheet 1 and Sheet 2 of Exhibit E is shown the class scale applying between Montana and Minnesota, North and South Dakota opposite the figure 1; opposite the figure 2 the Montana state rates are shown, which are applicable on both state and interstate traffic, and opposite the figure 3 are shown the Montana distributing or jobbing rates. It will be noted that the jobbing rates of Montana are lower than the rates are for miscellaneous movement between towns and cities not termed jobbing centers.

Exhibit F is a statement showing the present rate adjustment applying between Grand Forks, North Dakota and points in North Dakota on the Soo Line. The present rates are shown opposite the letter A, and the rates as the

result of the Board of Railroad Commissioners' decision in Case 2875 are shown opposite the letter B. The adjustment, it will be noted, includes increases as well as reductions. To Lankin, for instance, the first station shown on Exhibit F, the first five class rates are reduced. At Loma reductions prevail with the exception of the second class rate, which carries an increase. Brumbaugh, the third station on the exhibit, carries increases on the second, fourth and fifth class rates. At Pasha the first class rate is lowered one cent, no change in the second class, the third class rate is increased one cent, the fourth class rate is increased 1½ cents, and the fifth class rate is increased ½ cent. At [fol. 80] Rolette the first class rate is increased 1 cent, second class 2 cents, third class 1 cent, fourth class 2½ cents, fifth class is reduced ½ cent.

The general adjustment of the class rate structure by the Board of Railroad Commissioners in Case 2255 and 2875, in my opinion, equalizes the North Dakota jobbing cities with jobbing and manufacturing cities without the state, principally our greatest competitors, Minneapolis, St. Paul and Duluth.

It is true that the general class rate structure of the country is under investigation by the Interstate Commerce Commission under Docket 17000 Part 2. This was known at the hearing in these cases, as is shown by the examination of pages 280 to 282 of the record. This, of course, does not mean that the Interstate Commerce Commission is to prescribe rates for the State of North Dakota, as even after their decision in the case, which may be made this fall or two years hence, the Board of Railroad Commissioners of this state will set down for hearing a case to determine what rates will be reasonable, just and non-discriminatory, which does not mean that the North Dakota Board will have to find that the exact level of rates prescribed by the Interstate Commerce Commission on interstate traffic will have to be applied to intrastate traffic.

Likewise the rates on grain were under investigation by the Interstate Commerce Commission in Docket 17000 Part 7 when the State Mill & Elevator case was heard, Case No. 2375, and as previously stated, this case was decided, went through the courts, and the shippers of grain and grain

products are now enjoying the benefit of those state commission made rates, and have been since January 20th, 1927. The oral argument in the Federal grain case has just been concluded in Washington after over two years of litigation, and it is impossible to say when we will receive a decision from the Federal body, and the Federal grain case is considerably ahead of the Federal class rate case, as in the latter case the Examiners have not as yet gotten out the tentative report, which must be done, after which all parties will be given a chance to speak on brief, and the case will then be orally argued, and not until then will it be considered submitted, and from past experience in cases as voluminous as this one there is no telling when the Federal body will render its decision.

[fol. 81] The fact that plaintiffs are willing to put up a bond which purports to protect the North Dakota interests does not and cannot protect them. For instance, the jobbing cities in the State of North Dakota are in competition with the jobbing cities in Minnesota, particularly Duluth, Minneapolis and St. Paul, and this record fully shows the discrimination that exists in the rates applying from those distributing centers in Minnesota versus the jobbing cities of North Dakota to destinations in the state. Exhibit No. 9, page 2, presented in this case, shows that the terminal rates from Duluth, Minneapolis and St. Paul to Points in North Dakota are based upon approximately 90% of the regular going interstate scale between Minnesota and North Dakota, as shown by Exhibit C attached hereto. Therefore, it must be apparent to this Court that the jobbing cities of Duluth, Minneapolis and St. Paul can pass right through the jobbing cities in North Dakota with less than carload freight, and do business that rightfully belongs to the jobbing cities of North Dakota who are tax payers to the state, and neither a bond or anything else but the rates themselves, found just, reasonable and non-discriminatory by the Board of Railroad Commissioners of this state, can possibly relieve this situation.

T. A. Durrant.

Subscribed and sworn to before me this 22d day of July, 1929. Jennette M. Dailey, Notary Public. My commission expires March 6, 1934. (Seal.)

Hotel Lowry, St. Paul, Ramsey County, Minnesota.

COMMERCIA
GRAND

FOLD OUT IS TOO LARGE TO BE FILMED

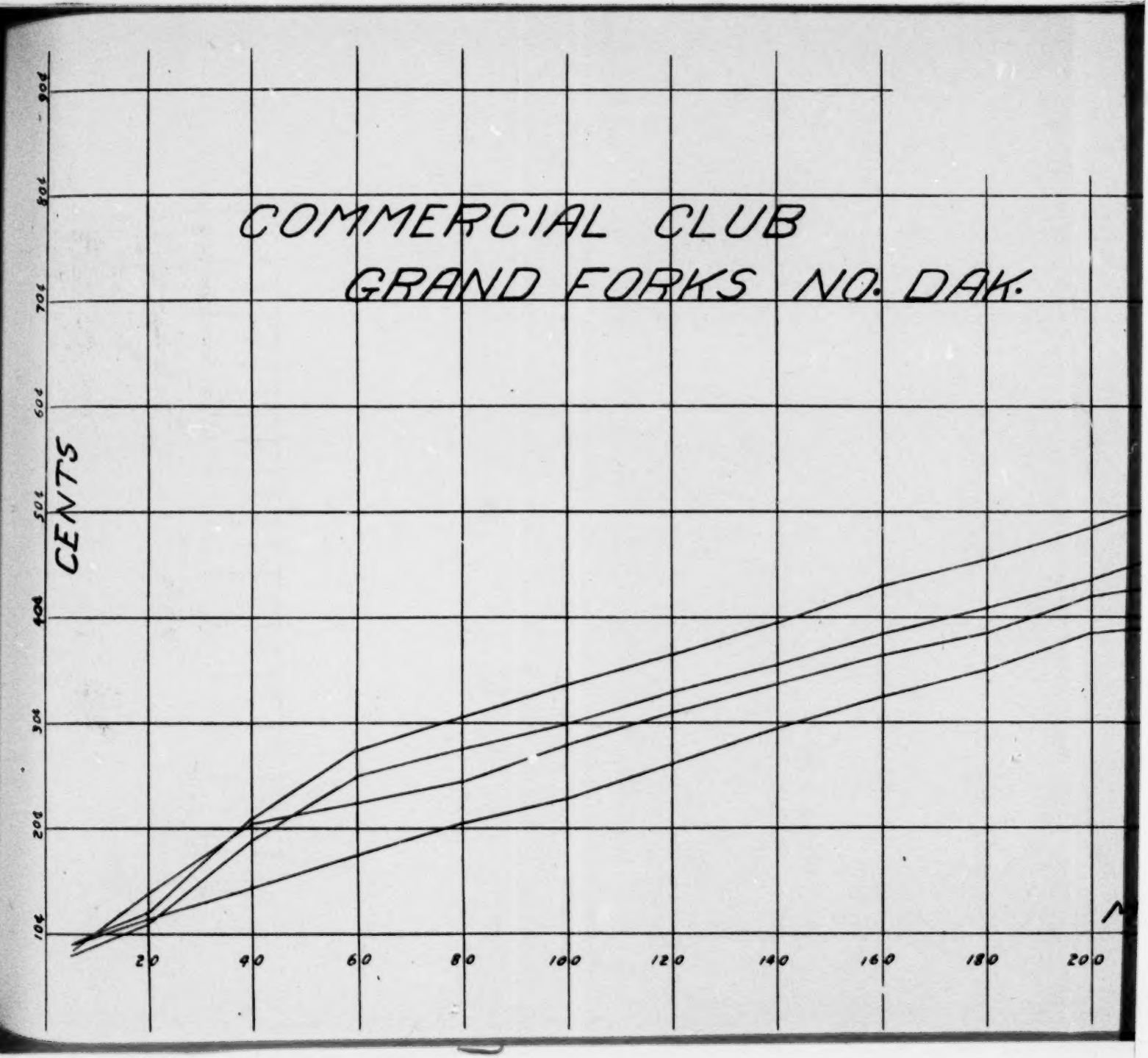
COMMERCIAL CLUB
GRAND FORKS NO. DAK.
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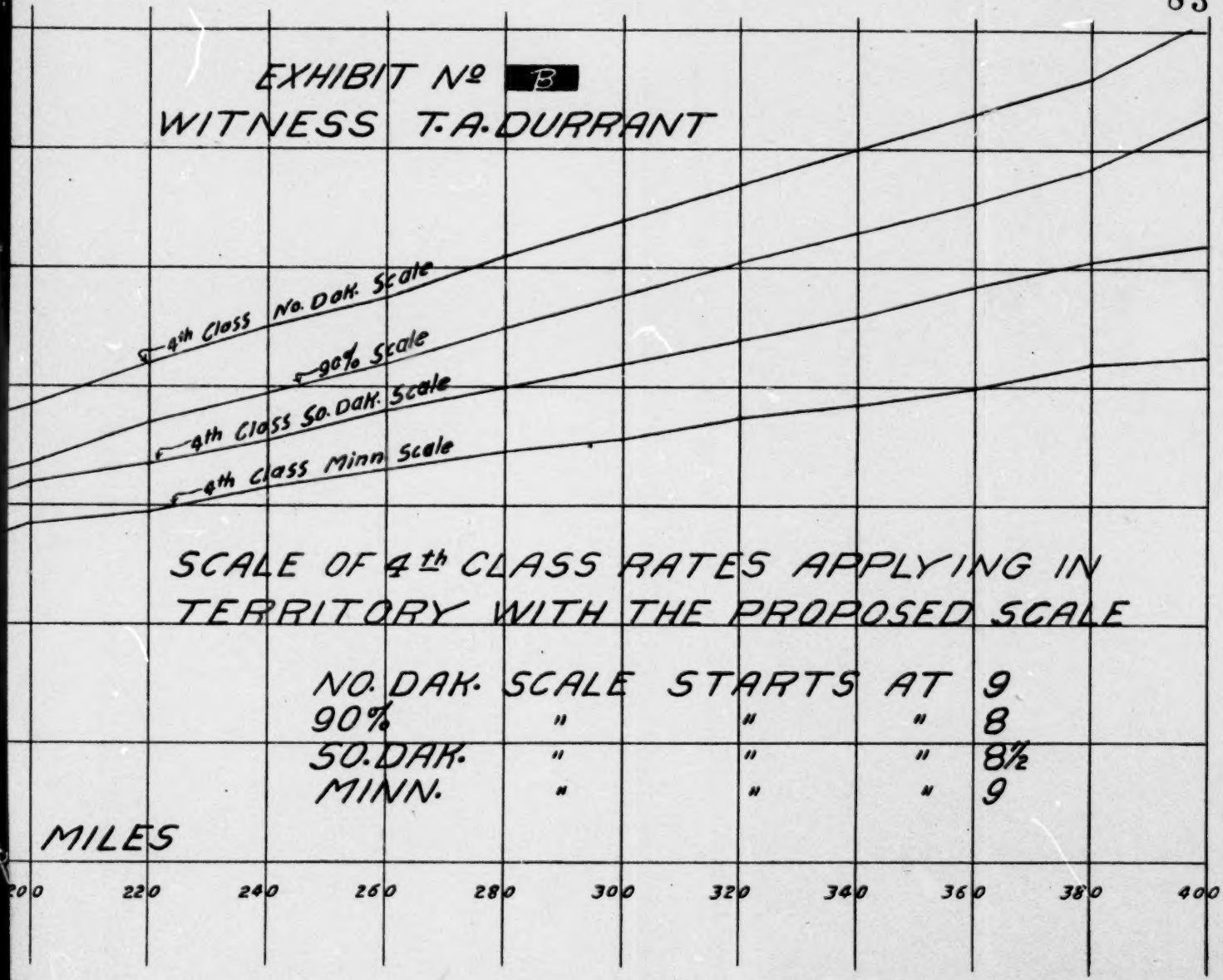
EXHIBIT Nº B
WITNESS T. A. DURRANT

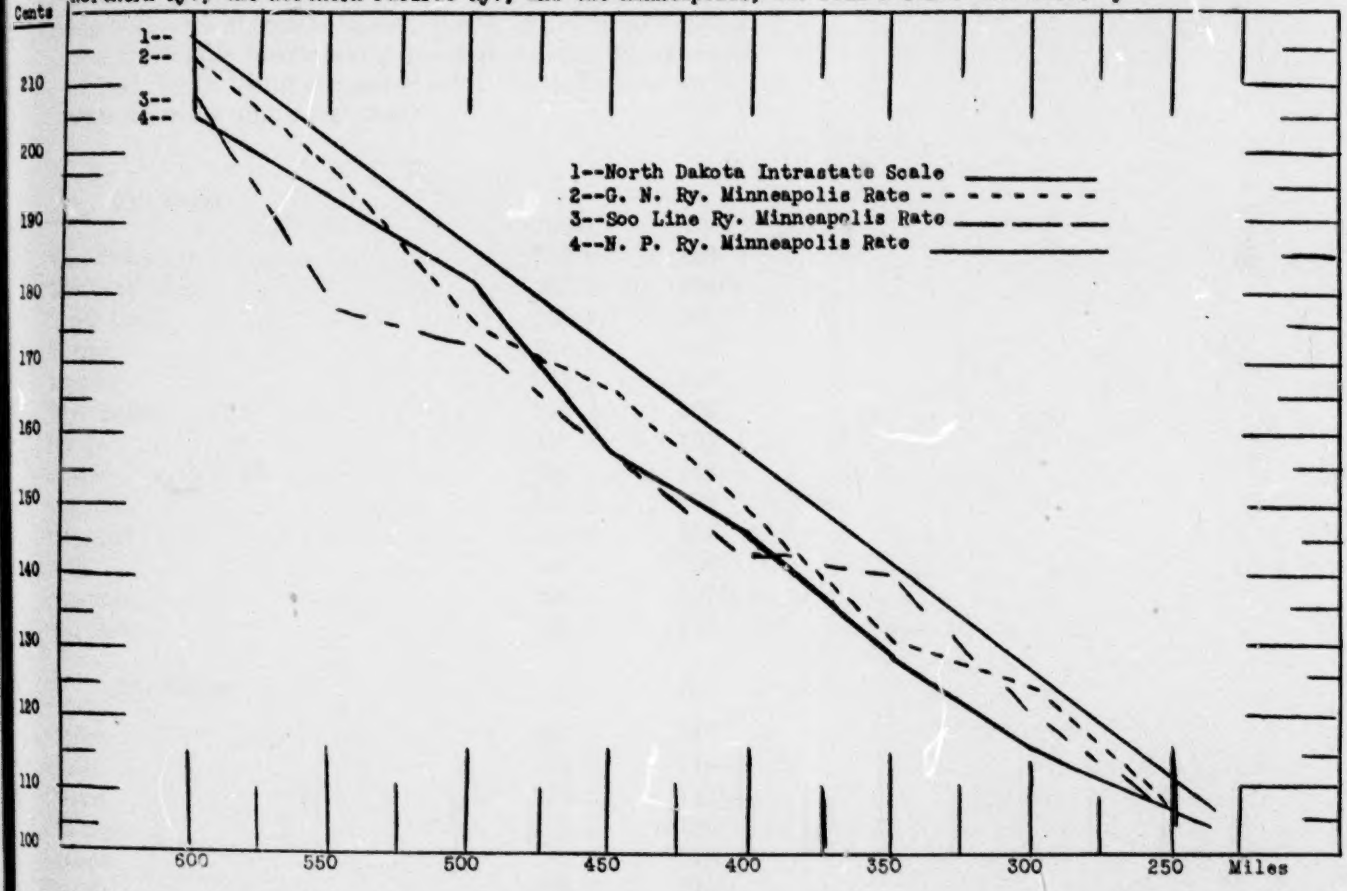


SCALE OF 4th CLASS RATES APPLYING IN TERRITORY WITH THE PROPOSED SCALE

NO. DAK.	SCALE	STARTS	AT	9
90%	"	"	"	8
SO. DAK.	"	"	"	8½
MINN.	"	"	"	9

EXHIBIT "C" - DURRANT

Graph of First Class Freight Rate under North Dakota intrastate scale for 250 to 600 miles contrasted with average First Class Rate between Minneapolis and North Dakota points for equal distances, on the Great Northern Ry., the Northern Pacific Ry., and the Minneapolis, St. Paul & Sault Ste. Marie Ry.



(Here follow Exhibit "A," "B," and "C," side folios 82, 83, and 84)

[fol. 85] Showing First Class Freight Rate between Minneapolis, Min., and points in North Dakota on the N. P. Ry., G. N. Ry., and Soo Line Ry., with distances, stations falling with- #250, #300, #350, #400, #450, #500, #550 and #600 mile blocks being taken as typical, the average of each block being compared with North Dakota intrastate scale for similar distance

N. P. Ry.

250 Miles:

	Miles	1st
Van Pelts	242.6	108
Keystone Jct.	243.5	108
Great Bend	244.4	108
Berndt	247.7	108
Barney	244.2	108
Wyndmere	250.4	108
Fargo	241	103
Cotter	245	108
Osgood	247.2	108
Haggart	246.2	108
Fife	248.2	108
Average	245.5	107½
No. Dak.	245.5	111

300 Miles:

Crete	291.3	111
Janet	295.2	114½
Oakes	299.2	117½
Gorman	295.3	116
Lisbon	297.3	116
Nome	293.5	116
Eastedge	297.7	116
Valley City	298.8	116
Average	296.0	115½
No. Dak.	296.0	126½

350 Miles:

	Miles	1st
Forest River	341.7	121
Voss	347.5	125
Kellogg	350.3	125
Medberry	345.2	124½
Edgeley	350.5	126½
Shepard	341.8	128
Windsor	349.3	135½
Cooperstown	345.7	128
Lovell	350.8	130½
Ypsilanti	346	130½
Montpelier	349.7	130½
Adrian	342.4	130½
Buchanan	346.4	133½
Average	346.5	128½
No. Dak.	346.5	142

400 Miles:

Lake Williams	390.9	151
McArthur	392.9	133
Robinson	399	151
Heaton	396.7	147½
New Rockford	392.6	144½
Divide	398.9	149
Steele	391.2	146
Geneva	399.2	146
Average	395.7	146
No. Dak.	395.7	156½

450 Miles:

Mandan	440.6	154
Wilton	447.1	164½
Pickardvile	446.4	170
Leeds	441.5	155
Hazelton	442.2	149
Sunny	443.5	156½
Lyons	448.8	158
Average	447.3	158
No. Dak.	447.3	172

500 Miles:

	Miles	1st
Breien	495	193
Timmer	498.7	193
Stanton	494.1	170
Kurtz	493.2	176½
Glen Ullin	498	178
Average	495.8	182
No. Dak.	495.8	187

550 Miles:

Elgin	543.8	193
New Leipzig	549.2	193
Halliday	542.6	193
Werner	548.3	196
Lehigh	545.3	191½
Dickinson	549.8	193
Average	546.5	193½
No. Dak.	546.5	202½

600 Miles:

Rider	595.3	206½
Average	595.3	206½
No. Dak.	595.3	215½

G. N. Ry.

250 Miles:

Belle Plaine	247.7	106
Havana	250.1	106
Addison	248	112
Howes	249.3	112
Argusville	247.7	108
Average	248.5	109
No. Dak.	248.5	111

300 Miles:

Hatton	299.9	125
Karnak	298.8	126½
Thompson	298.5	121
Average	299.1	124
No. Dak.	299.1	126½

350 Miles:

Dundas	350.7	142½
Grafton	346.4	125
Conway	345.8	125
Michigan	346.8	129
Average	347.8	130½
No. Dak.	347.4	142

[fol. 86] 400 Miles:

Walhalla	394.7	144½
Selz	393.9	155
Langdon	396.8	146
Hampden	397.1	146
Churches Ferry	393.6	151
Average	395.5	148½
No. Dak.	395.5	156½

450 Miles:

Simcoe	444.1	170
Genoa	450.5	172
Rolla	441	164½
St. John	448.4	167
Thorne	445.5	164½
Barton	444.6	164½
Berwick	443.3	164½
Towner	450.7	167
Average	446	167
No. Dak.	446	172

500 Miles:

Landa	493.5	175
Westhope	499.3	175
Dunning	491.3	175
Maxbass	496.2	175
Glenburn	496	175
Minot	492.4	175
Gassman	498	175
Hartland	494.8	175
Roach	492.3	181
Tagus	497.6	181
Average	495.2	176
No. Dak.	495.2	185½

550 Miles:

	Miles	1st
Tioga	546.9	199½
Powers Lake	545.8	199½
Lignite	542.9	193
Stampede	550.9	196
Northgate	543.3	202½
Average	545.9	198
No. Dak.	545.9	202½

600 Miles:

Trenton	597.8	214½
Todd	593.6	214½
Zahl	595.6	217½
Grenora	597.6	220½
Average	596.2	217
No. Dak.	596.2	217½

Soo Line Ry.

250 Miles:

Venlo	249	108
Average	249	108
No. Dak	249	111

300 Miles:

Faust	296	121
Kilbernie	295	121½
Boynton	292	121½
Valley City	291	116
Average	294	120
No. Dak.	294	124½

350 Miles:

Millers Spur	344	140
Bordulac	348	140
Wichek	345	140
Average	345.6	140
No. Dak.	345.6	142

400 Miles:

	Miles	1st
Fordville	394	133
Harvey	400	156½
Dewar	398	133
Moffit	396	149
Average	396	143
No. Dak.	396	156½

450 Miles:

Bergen	441	169
Voltaire	447	170
Essex	441	142½
Balta	447	164
Devils Lake	446	146
Alsen	448	151
Baldwin	442	158
Kongsberg	447	170
Average	448	159
No. Dak.	448	172

500 Miles:

Carpio	499	175
Umbria	494	164½
Ryder	492	176½
Makoti	499	181
Average	496	174½
No. Dak.	496	187

550 Miles:

Flaxton	544	187
Kramer	541	175
Russell	550	175
Greene	546	175
Average	545	178
No. Dak.	545	202½

600 Miles:

Ambrose	595	208½
Average	595	208½
No. Dak.	595	215½

[fol. 87] EX. D—DURRANT

Case No. 2255 and 2875

Statement showing the rates published from Minneapolis, St. Paul and Duluth to various points in North Dakota, which published rates are shown under the column "Present"; what those rates would be if those cities paid the regular distance scale, which is shown under the heading "Interstate Scale"; also what the rates from Fargo, Grand Forks, and Wahpeton are to points in North Dakota equidistant from the latter-named cities as the North Dakota points are from Minneapolis, St. Paul, and Duluth. Under the heading "Proposed" are the rates based upon the decision of the Board of Railroad Commissioners in Case No. 2255.

	Between	And	Miles	Present	Interstate scale
1.	Minneapolis	Cooperstown, N. D.	346	1.28	1.42
2.	St. Paul	Lakota, N. D.	368	1.33	1.47½
3.	St. Paul	Larimore, N. D.	331	1.25	1.37
4.	Duluth	Michigan, N. D.	348	1.29	1.42
5.	St. Paul	Shawnee, N. D.	338	1.25	1.38½

	Between	And	Miles	Present	Proposed
1.	Fargo, N. D.	Medora, N. D.	349	1.42	1.28
2.	Fargo, N. D.	Chama, N. D.	369	1.47½	1.33
3.	Fargo, N. D.	Fryburg, N. D.	335	1.37	1.23½
4.	Grand Forks, N. D.	Grenora, N. D.	349	1.42	1.28
5.	Wahpeton, N. D.	Sherwood, N. D.	338	1.38½	1.25

Tariff Authority: G. N. I. C. C. A-6559, A-6525, N. D. R. C. No. 93. N. P. I. C. C. 8504 and 8463.

Case Nos. 2255 and 2875

Statement Taken from Pages 13, 14, and 15 of Exhibit No. 8 in This Case, Showing the Relative Level of Interstate Rates in North Dakota, Minnesota, South Dakota, and Between Montana, Minnesota, North and South Dakota; also the Montana State Rates and the Montana Distributing Rates

Between Aberdeen and	Miles	1st	2nd	3rd	4th	5th	A	B	C	D	E	Per cent So. Dak. interstate
Minneapolis	285.4	115½	97	76	57½	45½	45½	39½	35	27½	23	100%
South Dakota-East Distance Scale	285	104	87½	70	52	42	42	36½	32½	26½	21	91%
Minnesota Dist'r Distance Scale	285	115½	99	76	57½	45½	45½	41½	35	27½	23	101%
North Dakota Intrastate Distance Scale	285	121½	103½	81	61	48½	48½	43	36½	29½	24	106%

(1) Between Montana and Minnesota, North and South Dakota.
(2) Montana state rates, applicable also in intrastate traffic.
(3) Montana distributing rates.

Miles		1st	2nd	3rd	4th	5th	A	B	C	D	E	Average
5	(1)	22½	19	16	13½	10	11½	8	7	6	4½	11.80
	(2)	16	13	11½	10½	8½	8½	6	4½	4½	2½	8.55
	(3)	14	13	10½	8½	7	7	6	4½	4½	2½	7.75
25	(1)	36	30	25½	21	18	18	15	11	9	7½	19.00
	(2)	34	28½	24½	20	17	17	14	10½	8½	7	18.10
	(3)	31	27	21½	18½	16	16	13	10½	8½	6	16.80
50	(1)	52½	45	38	32	27	27	21	16½	14	11	28.40
	(2)	49½	42½	35½	29½	25	25	20	16	13	10½	26.65
	(3)	45	38½	31	27	22½	22½	18½	14	11½	8½	23.90

75	(1)	68	56	47	39	33	33	27	20	16½	14	35.15
[fol. 89]	(2)	62	52	44	36½	31	31	25	18½	16	13	32.90
	(3)	56½	47½	39½	34	28½	28½	22½	17	14	11½	29.95
100	(1)	83	70½	59	50	42	42	33	25½	21	16½	44.25
	(2)	78	66½	55½	47	39½	39½	31	24½	20	16	41.75
	(3)	70	61	49½	42½	35½	35½	28½	21½	18½	14	37.65
150	(1)	102	87	72	61½	51	51	41	30	25½	21	54.20
	(2)	96	81½	67½	58	47½	47½	38½	28½	24½	20	50.95
	(3)	87½	74½	61	52	44	44	35½	27	22½	17	46.50
200	(1)	119	101	83	70½	60	60	48	36	30	24	63.15
	(2)	111½	94½	78	66½	56½	56½	45	34	28½	22½	59.35
	(3)	101½	86	70	61	51	51	41	31	25	20	53.75
250	(1)	135	115½	95	81	68	68	54	41	34½	27	71.90
	(2)	126½	108½	89	76	63½	63½	51	38½	33	25	67.45
	(3)	115	98½	80½	69½	58	58	47	35½	29½	22½	61.40
300	(1)	150	128	105	90	75	75	60	45	38	30	79.60
	(2)	141	119½	98½	84½	70	70	56½	42½	35½	28½	74.65
	(3)	128½	108½	90	78	65	65	51	38½	33	25	68.25
350	(1)	167	141	117	101	84	84	66	50	42	33	88.50
	(2)	156½	132½	110	94½	79	79	62	47	39½	31	83.10
	(3)	142	121	100½	86	72	72	56½	42½	35½	28½	75.65

[fol. 90] EX. F—DURRANT

Case No-. 2255 and 2875

Statement showing the present rate adjustment for the first five classes applying between Grand Forks, N. Dak., and points in North Dakota located on the Soo Line. Opposite the letter "A" will be found the present rates; opposite the letter "B" will be found the rates prescribed by the Board of Railroad Commissioners in Case No. 2875

Between	And		Classes 1	2	3	4	5
Grand Forks	Lankin	A	64½	56	44	35	25
		B	58	50	39	30	22
"	Loma	A	69	57½	45½	35	27½
		B	67	58	45	35	27
"	Brumbaugh	A	78	65½	52	39½	30½
		B	77	66	52	40	31
"	Pasha	A	79	67	52	39½	32½
		B	78	67	53	41	31
"	Armourdale	A	79	67	52	39½	32½
		B	79	68	53	41	33
"	Arndt	A	78	65½	52	39½	30½
		B	75	63	50	40	31
"	Rolette	A	82	70	55	41½	33½
		B	83	72	56	44	33
"	Tasco	A	88	74½	57½	44½	35
		B	88	76	60	46	36
"	Egeland	A	74½	64	48½	38½	30½
		B	74	63	50	38	30
"	Mylo	A	82	70	55	41½	33½
		B	81	69	54	42	32
"	Overly	A	88	74½	57½	44½	35
		B	87	74	58	45	35
"	Gardina	A	96	82	64	48½	38½
		B	90	77	61	46	36

(Rates shown opposite the letter "'A" are taken from Exhibit No. 31.)

[File endorsement omitted.]

[fol. 91] IN UNITED STATES DISTRICT COURT

[Title omitted]

AFFIDAVIT OF G. M. SPRINGER—Filed July 2, 1929

G. M. Springer, being first duly sworn, deposes and says: That he is and has been Traffic Manager for the Commercial interests of Jamestown, North Dakota, since January 1st, 1918.

That prior thereto he was engaged in railroad traffic work for a period of twenty-five or more years including a position of traffic manager of the Midland Continental Railroad of the South Dakota Central Railway and as freight rate clerk for a number of other companies. That he has appeared in a number of cases before the Interstate Commerce Commission, the Board of Railroad Commissioners of North Dakota and other regulatory bodies.

That the order of the North Dakota Board of Railroad Commissioners in the case now before this court was intended to remove prejudice against Jamestown, North Dakota, in connection with freight shipments between that point and other points within the State of North Dakota, especially points located on the Minneapolis, St. Paul & Sault Ste. Marie Railway.

That this prejudice in favor of other cities of North Dakota including Fargo, has been of long standing as evi- [fol. 92] denced by the decision of the North Dakota Commission and the following efforts which have been made by shippers of Jamestown to remove a prejudicial situation.

On August 7th, 1920, a committee of six business men of Jamestown made a trip to St. Paul and interviewed traffic officials of the Northern Pacific Railway requesting an adjustment, which was not granted for reasons which need not be enumerated. However, this conference was followed by others and finally the matter was submitted to the Interstate Commerce Commission as an informal complaint on January 14, 1922. Failing of securing relief in that manner, a formal complaint was lodged with the same commission under date of August 4th, 1922. At that time the North Dakota Commission had lost its jurisdiction but which was restored to it and following which the aforementioned complaint was withdrawn and the matter submitted to the Board of Railroad Commissioners of North Dakota in an informal complaint. Nothing being accomplished through these efforts a formal complaint was lodged with this Board and assigned their case No. 2381 dated December 30, 1925 and this latter case was heard jointly with Case No. 2255, the decision in which is now before this Court.

Under the present freight rate adjustment Jamestown, North Dakota, is wholly unable to do a jobbing or distributing or assembling business within the State of North Da-

kota at points located on the lines of the Minneapolis, St. Paul & Sault Ste. Marie Railway, the Great Northern Railway, or the Chicago, Milwaukee, St. Paul & Pacific Ry. which most seriously retards the free natural and normal commercial development of that city which is located in central North Dakota. The decision and order of the North Dakota Commission now before this Court would remedy this intolerable situation and which has extended over a long period of years and would give to Jamestown, North Dakota, the same basic class freight rates as the plaintiff railroads have voluntarily extended to Fargo, North Dakota, and other points for a period extending over the past twenty years at least.

G. M. Springer.

Subscribed and sworn to before me this 2nd day of July, 1929. Jennette M. Dailey, Notary Public, Ramsey County, Minnesota. [Seal.]

[fol. 93] [File endorsement omitted.]

[fol. 94] In United States District Court

Affidavit of James G. Morrison—Filed July 3, 1929

State of Minnesota,
County of Ramsey, ss:

James G. Morrison, being first duly sworn, on oath deposes and says:

That he is the General Freight Agent of the Northern Pacific Railway Company, one of the plaintiffs in the above entitled proceedings; that as such General Freight Agent he has charge and supervision of the establishment and publication of intrastate and interstate freight rates on said railroad; that he has been engaged in railroad traffic work for more than thirty-five years and has made a study of and is familiar with the class rate adjustment intrastate in North Dakota and interstate to, from and through the state of North Dakota on the lines of plaintiffs herein.

That he has read the affidavit of G. M. Springer filed herein and that said affidavit refers to inequalities in the

intrastate class rate adjustment in North Dakota and not to the relationship that would exist between the interstate class rates and the North Dakota intrastate class rates if the order of the Board of Railroad Commissioners of North Dakota of May 8, 1929, becomes effective.

The statement in the last paragraph of said affidavit of G. M. Springer to the effect that "The decision and order of the North Dakota Commission now before this Court would remedy this intolerable situation and which has extended over a long period of years, and would give to Jamestown, North Dakota, the same basic class freight rates as the plaintiff railroads have voluntarily extended to Fargo, North Dakota, and other points for a period extending over the past 20 years at least" is incorrect if it is intended thereby to say that the order of the North Dakota Commission of May 8, 1929, would establish a level of intrastate class rates the same as the plaintiffs have voluntarily extended to Fargo and other points. The intrastate single and joint line class rates now in effect in North Dakota on plaintiffs' lines are the same, distance considered, between all points in the state of North Dakota, except as to certain joint line rates hereinafter referred to. From Fargo via [fol. 95] the Northern Pacific and C. M. St. P. & P. Railway and from Grand Forks via the Northern Pacific and Great Northern Railways to certain points on the Soo Line in North Dakota, joint line class rates are in effect which are somewhat lower than the joint line rates from Jamestown for the same distances to Soo Line Points.

The order of the North Dakota commission of May 8, 1929, would establish different and lower rates than the existing rates from Jamestown to stations on the Soo Line and would require rates to be established from Fargo and Grand Forks which are generally lower than the rates now in force from these jobbing points to stations on the Soo Line. The single line class rates now in effect from Jamestown, N. D., via the Northern Pacific Railway, intrastate to all points in North Dakota, are the same as those applying single line between all other North Dakota points on the Northern Pacific Railway on intrastate traffic for the same distances. In other words, so far as single line class rates intrastate in North Dakota are concerned Jamestown, North Dakota, enjoys the same rates as any other station in that

state. The only exception to the uniform basis of class rates intrastate in North Dakota existing today is the joint line basis of rates from Fargo and Grand Forks to certain Soo Line stations as heretofore referred to.

As to single line class rates the order of the North Dakota Board does not perpetuate any basis of class rates voluntarily established by plaintiffs, for the reason that said order in every instance will reduce the existing intrastate class rates in North Dakota 10% when applied to, from or between any station in North Dakota designated as a jobbing point. Nor would said order perpetuate any joint line class rates intrastate in North Dakota which plaintiffs have voluntarily established between points in North Dakota because it prescribes joint line rates on an entirely different and generally on a lower basis than any joint line rates which are now in effect on intrastate traffic in North Dakota.

Regarding Affidavit of T. A. Durrant

The blue print marked "Exhibit A" attached to T. A. Durrant's affidavit contains four lines showing different scales of first class rates. The top line is the scale of first class rates uniformly applied for single line movements intrastate in North Dakota. The line marked "90% of Scale" show what the North Dakota intrastate first class single line rate would be under the North Dakota Commission's order of May 8, 1929. The line marked "South Da- [fol. 96] kota East of Missouri River Scale" applies only intrastate between points in South Dakota east of the Missouri River. The line marked "Minnesota Scale" is a scale which applies only between points in Minnesota with the exception that it applies in some instances between Minnesota points and Superior, Wis., because of the long-and-short-haul clause of Section 4 of the Interstate Commerce Act, Superior being intermediate to Duluth. This scale, marked on the blue print "First class Minnesota Scale" in no instance applies interstate between Minnesota and North Dakota. Furthermore, said first class scale shown on said blue print, as well as the rates for all other classes under the Minnesota scale, apply only between certain Minnesota points for the reason that said scale was condemned by the Interstate Commerce Commission in the Fargo case,

98 I. C. C. 691, as being unreasonably low and unjustly discriminatory against interstate commerce, and the Interstate Commerce Commission in that proceeding prescribed a higher basis of rates for intrastate application in Minnesota between the particular points which were in issue in the proceedings before the Interstate Commerce Commission.

The blue print Exhibit B attached to T. A. Durrant's affidavit is identical with Exhibit A except that it shows the fourth class rates. What has been said above with respect to Exhibit A applies equally to Exhibit B.

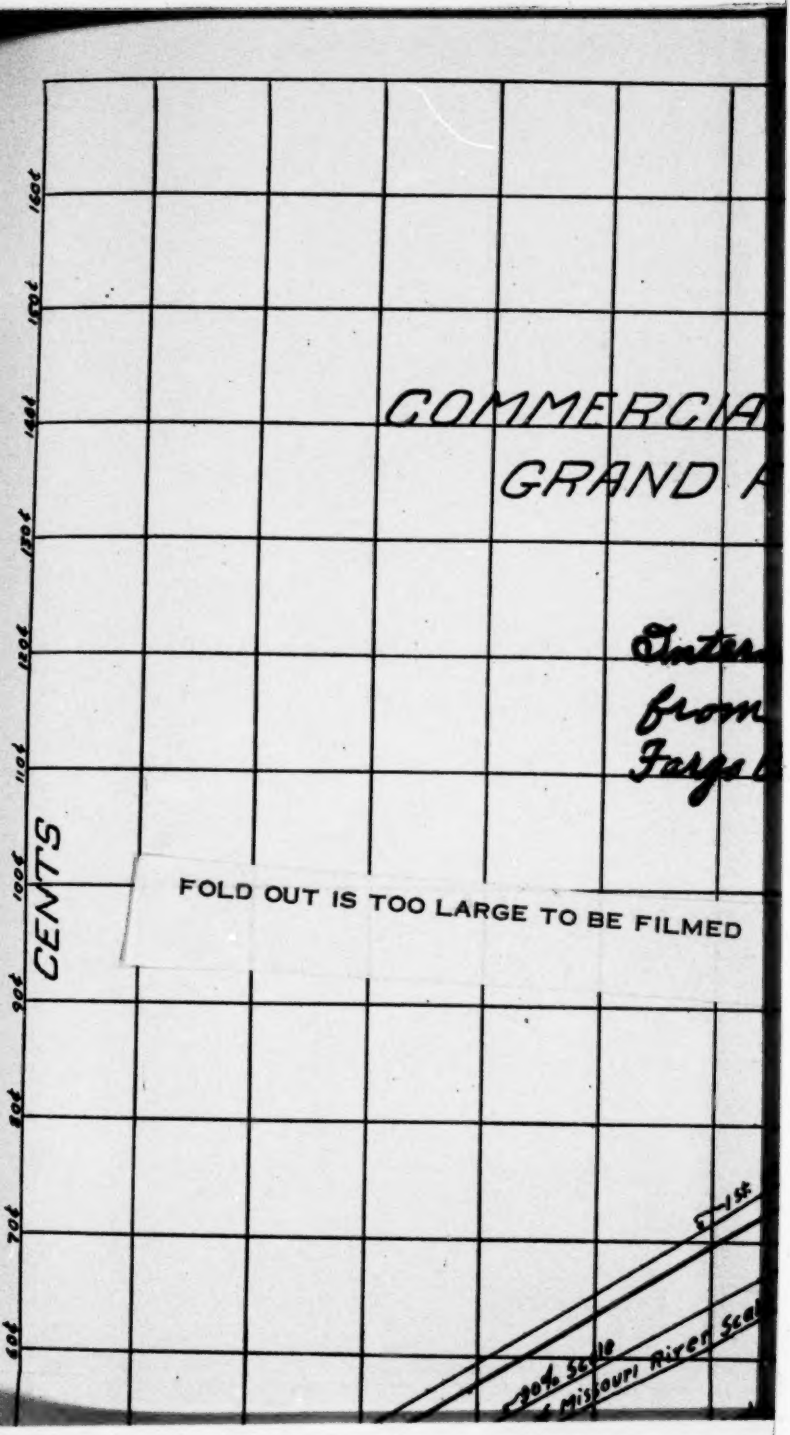
The blue prints attached hereto, marked Exhibit A and Exhibit B, are the blue prints which were attached to T. A. Durrant's affidavit, to which blue prints affiant has added by a red line the class rates prescribed by the Interstate Commerce Commission's order dated June 2, 1925, in the case of Commercial Club of Fargo v. A. & W. Ry. Co. et al., 98 I. C. C. 691, which scale of class rates is hereinafter referred to as the "Fargo scale." Said Fargo scale was prescribed for interstate application from Fargo to points in Minnesota within a radius of 150 miles of Fargo, and from the Twin Cities and Duluth to Fargo, Valley City and Jamestown, North Dakota, and also from the Twin Cities and Duluth and from Moorhead, Minn., and from certain other jobbing points in northwestern Minnesota to points in Minnesota distant not more than 150 miles from Fargo. Said fourth class Fargo scale rates are shown by the blue print Exhibit B to be higher than or the same as the present North Dakota intrastate fourth class rates for dis-
[fol. 97] tances up to 320 miles and higher than the fourth class rates prescribed by the North Dakota Commission for intrastate application for all distances shown on said blue print. Said first class Fargo scale of rates shown on Exhibit A are higher than the first class rates ordered by the North Dakota Commission for intrastate application in North Dakota for all distances up to approximately 340 miles.

As alleged in paragraph XI of the bill of complaint herein, more than 85% of all North Dakota intrastate traffic which moves on class rates moves for distances under 160 miles; and at least 40% of North Dakota intrastate traffic moving on class rates moves on the fourth class rates.

The rates on brick, grain and reinforced concrete pipe, referred to on pages 3 to 5 of T. A. Durrant's affidavit, are commodity rates and not class rates.

It is stated on page 6 of T. A. Durrant's affidavit "that Minneapolis, St. Paul and Duluth do not pay the regular interstate scale, but enjoy a scale approximately 10% lower than the interstate scale, and that if the jobbing towns in North Dakota are given like treatment that their rates would be approximately on the same level mile for mile as Minnesota jobbing towns are given to points in North Dakota." Apparently Exhibits C and D were prepared to support the foregoing statement. By a careful selection of destination points in North Dakota, however, a picture has been shown which is not representative of the real situation with respect to the rates from Minneapolis, St. Paul and Duluth to points in North Dakota as compared with the present intrastate rates in North Dakota for similar distances. As a matter of fact, the existing class rates from St. Paul, Minneapolis and Duluth to points in North Dakota are approximately 5% less than the rates which apply today intrastate in North Dakota, while the North Dakota Commission's order of May 8, 1929, would make a reduction of 10% in the rates from, to and between all the important shipping points within the state, thus reducing the North Dakota intrastate class rates below the level of the present interstate rates from St. Paul, Minneapolis and Duluth to North Dakota points. Even an examination of the rates and points selected in Exhibit C shows that the rates from Minneapolis and Duluth to North Dakota are not as much as 10% below the North Dakota intrastate rates for similar distances. A computation of the rates shown on the exhibit shows that on the average [fol. 98]the rates from Minneapolis and Duluth to the selected destinations in North Dakota are less than the present North Dakota intrastate scale of rates to the extent of but 5.4% for the three railroads shown.

The showing made in Exhibit D would be entirely different if other points had been selected. For instance, while the first class rate from Minneapolis to Cooperstown, North Dakota, is $1.28 per cwt. for 346 miles, the first class rate from Minneapolis to Dundas, North Dakota, is $1.42½ for 350.7 miles, and the first class rate from Minneapolis to


COMMERCIA
GRAND A
CENTS
FOLD OUT IS TOO LARGE TO BE FILMED

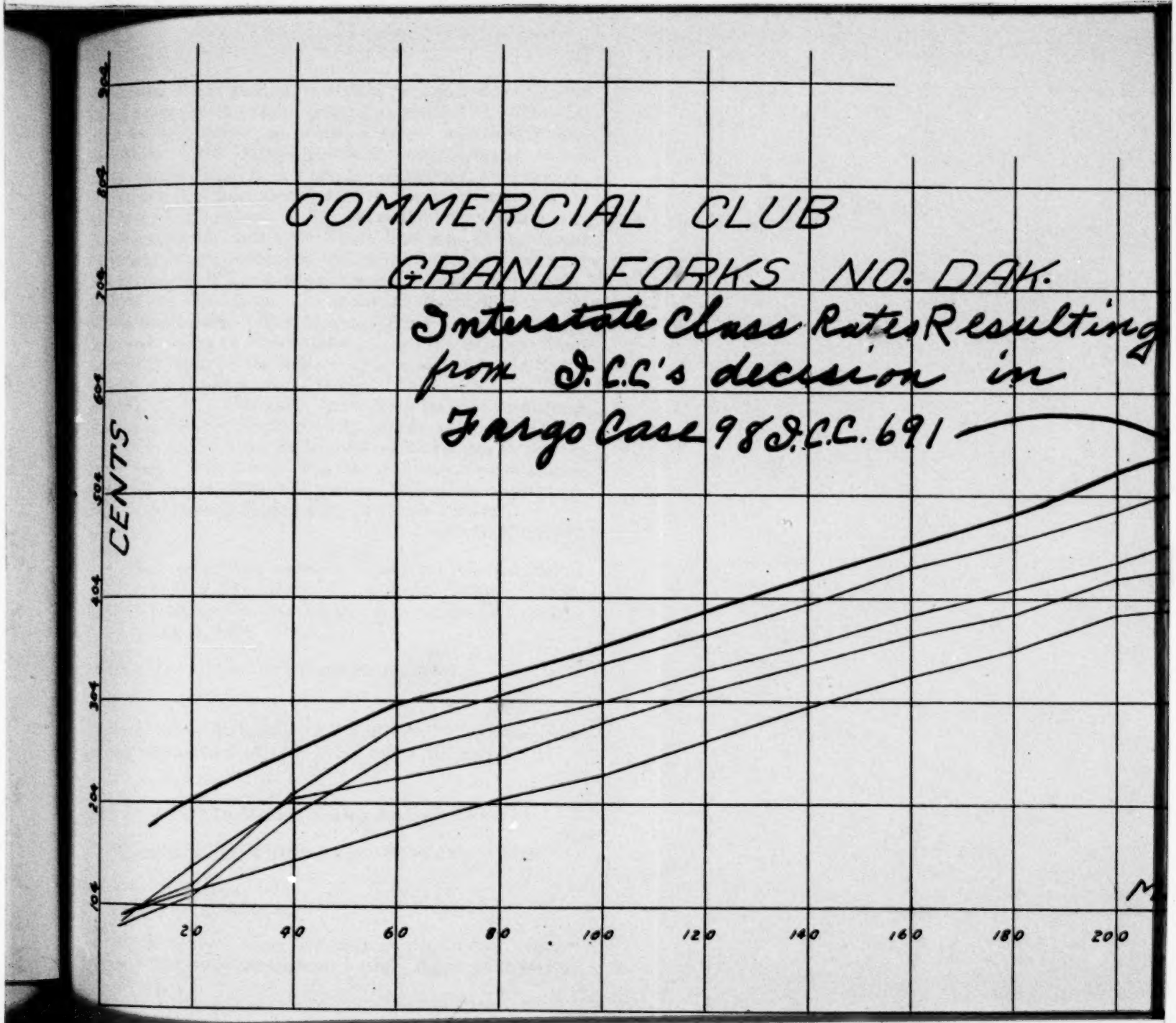
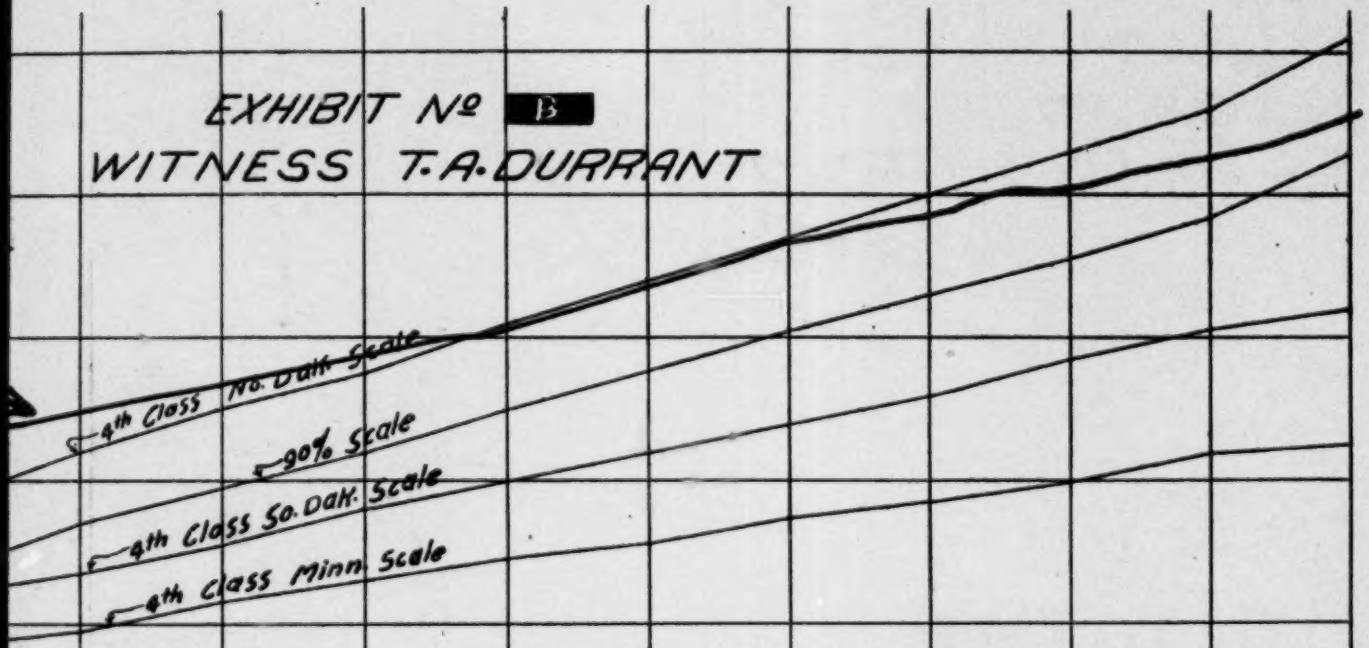

COMMERCIAL CLUB
GRAND FORKS NO. DAK.
Interstate Class Rates Resulting
from I.C.C's decision in
Fargo Case 98 I.C.C. 691
CENTS
20
40
60
80
100
120
140
160
180
200

EXHIBIT Nº B
WITNESS T.A. DURRANT

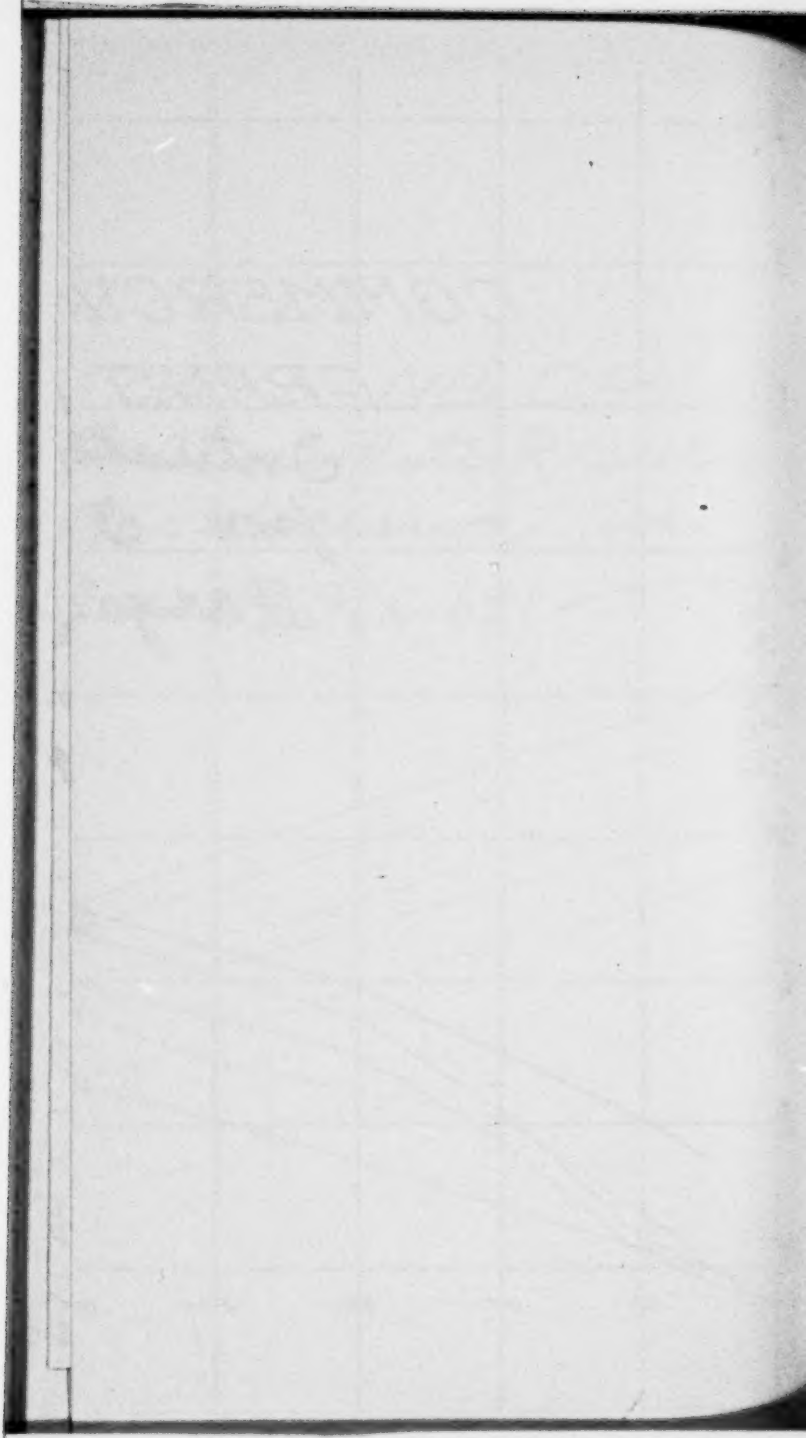


SCALE OF 4th CLASS RATES APPLYING IN TERRITORY WITH THE PROPOSED SCALE

NO. DAK.	SCALE	STARTS AT	9
90%	"	"	8
SO. DAK.	"	"	8½
MINN.	"	"	9

ILES

220 240 260 280 300 320 340 360 380 400



Buchanan, North Dakota, is $1.33½ for 346.4 miles. All of these rates are shown on page 2 of Exhibit C. The reasons for this variation in rates from Minneapolis and Duluth to North Dakota points for approximately equal distances are found in competitive conditions, for example, the longer line meeting the rate of the shorter line, as is the case of Hannaford, N. D., where the longer line of the Northern Pacific meets the short line rate of the Great Northern, which influences the rate at Cooperstown and has depressed it below what it would be but for the competition of the Great Northern at contiguous points. Furthermore, these specific rates from Minneapolis, St. Paul and Duluth to North Dakota points do not apply from interior jobbing points in Minnesota to points within North Dakota, for example, from Detroit Lakes, Minn., to Cooperstown, N. D. The rates from these interior Minnesota jobbing points to North Dakota points are on the same level as or higher than the present North Dakota intrastate scale which the North Dakota Railroad Commission's order of May 8, 1929, will reduce 10% when applied to, from or between jobbing points in North Dakota.

James G. Morrison.

Subscribed and sworn to before me this 3rd day of July, 1929. Jessie O. Bohrer, Notary Public, Ramsey County, Minn. My commission expires Aug. 8, 1934. (Seal.)

[fol. 99] [File endorsement omitted.]

(Here follow Exhibits "A" and "B," diagrams illustrating comparison of rates, side folios 100 and 101.)

[fols. 102 & 103] In United States District Court

Affidavit of P. B. Beidelman—Filed July 3, 1929

State of Minnesota,
County of Ramsey, ss:

P. B. Beidelman, being first duly sworn, on oath deposes and says that he is the General Freight Agent of the Great

Northern Railway Company, one of the plaintiffs in th above entitled proceeding; that as such General Freigh Agent he has charge and supervision of the establishme and publication of intrastate and interstate freight rat on said railroad; that he has been engaged in railroa traffic work for more than 29 years and has made a stud of and is familiar with the class rate adjustment on th plaintiff railroads in North Dakota, and interstate to, fro and through the state of North Dakota.

That he has read the affidavit of James G. Morrison the above entitled proceeding and that the facts there stated are true and correct to the best of his knowled and belief.

P. B. Beidelma

Subscribed and sworn to before me this 3rd day July, 1929. Jessie O. Bohrer, Notary Publ Ramsey County, Minn. My commission expi Aug. 8, 1934. (Seal.)

[File endorsement omitted.]

[fol. 104] IN UNITED STATES DISTRICT COURT

DECISION—Filed July 8, 1929

This cause was heard on the 2nd day of July, 1929, St. Paul, Minnesota, with the consent of all parties, u an application by the plaintiffs duly made to a court three judges, constituted under Section 266 Judicial Co for an interlocutory injunction against the defendants, straining them from putting into effect an order of Board of Railroad Commissioners of the State of No Dakota of May 8, 1929.

The order of the Board, of which complaint is made, vides for a scale of class rates on certain classes of fre between jobbing points within the state of North Dak which are approximately ten per cent lower than the r now in effect.

The plaintiffs, railroads engaged in intrastate comm in and interstate commerce into the state of North Dak contend that the order of May 8, 1929, seeks to put effect rates which are unlawful because unduly discrim tory against interstate commerce and in violation of Se

[fol. 105] 13 of the Interstate Commerce Act; that there has been in the state of North Dakota for many years an established and recognized relationship between interstate and intrastate class rates; that the Interstate Commerce Commission in 1920, when there was a general increase in interstate rates, required that intrastate rates in North Dakota be proportionally raised; that when the interstate rates in 1922 were reduced ten per cent, the intrastate rates were also similarly reduced; that the interstate rates have not since been lowered, but, where changes have been made, have been increased, so that today intrastate rates are generally more favorable in comparison with interstate rates than heretofore; that since 1925 there has been pending before the Interstate Commerce Commission an investigation known as "Rate Structure Investigation, Docket 17,000," in which the question of the relationship in North Dakota of interstate to intrastate rates is being considered and will be determined, and in which proceeding the State Board has participated; that, in addition, the plaintiffs have, since May 8, 1929, commenced another proceeding raising the question of the validity of the intrastate rates fixed by the order of May 8th; that, if that order becomes effective, the carriers will be forced to put into effect rates that are unlawful, or, upon their failure so to do, be subjected to the penalties provided by the laws of the State for failure to comply with the order; that if they do comply with it and if it shall eventually be determined to be unlawful, they will have lost substantial revenues and they and the public will have suffered those disadvantages which follow from a situation where intrastate rates are unduly out of line with interstate rates.

The defendants contend that the showing made by the plaintiffs is not sufficient to justify the issuance of the injunction prayed for; that the presumption is that the intra-[fol. 106] state rates fixed by the Board are not unduly out of line with interstate rates; that there will be no irreparable loss or damage even if it should be held that the class rates fixed by the order of May 8th are violative of Section 13 of the Interstate Commerce Act; that there is not now and has not been for some years any fixed relationship between the interstate and intrastate rates, and that this Court should not interfere with the order of the North Dakota Board made after a full hearing and due deliberation, or

require those affected by it to wait for relief until the Interstate Commerce Commission files a decision in Docket No. 17,000 or otherwise determines the validity of the intrastate rates sought to be established.

The position of the defendants is not unreasonable. It is evident, from the recitals in the order of the State Board, that the length of time consumed by the Interstate commerce Commission in reaching a decision in Docket No. 17,000, has, in the opinion of the State Board, resulted in a denial of justice with respect to the rates in question, and that jobbers at certain jobbing points in the State are believed to be unduly prejudiced because of alleged disparity between intrastate class rates and interstate class rates from outside jobbing points, and that it was in an endeavor to do away with the discrimination believed to exist that the order of May 8th as made. It is conceded—as, of course, it must be—that this court has no power to determine the question as to whether the rates fixed by the order of May 8th do or do not discriminate against interstate commerce, or whether they do or do not create an undue disparity between intrastate and interstate rates. That question is before the Interstate Commerce Commission and it alone has jurisdiction to determine it. It may find that the State Board was well within its rights in doing what was done, or it may find to the contrary. We think, however, in view of the pendency of Docket No. 17,000, that the orderly [fol. 107] and logical way to have the question finally settled is to permit the Interstate Commerce Commission to complete that investigation and file its decision before there shall be an attempt to adjust intrastate class rates even to the extent attempted by the order of May 8th. Such rates, if they prove temporary merely—as the plaintiffs contend they will—will only briefly afford the relief sought and may ultimately prove more of a disadvantage than otherwise to those for whose benefit they are intended, while at the same time they may cause a substantial loss to the carriers and an undue burden upon interstate commerce. On the other hand, if the rates are lawful—as the defendants claim—and are enjoined, their effectiveness cannot long be postponed in any event, and, to a considerable extent, the injury done by staying their effectiveness can be mitigated by requiring the railroads to make reparation in case it is found that they do not encroach upon interstate commerce

and that the State Board was within its rights in fixing them.

We do not pass upon the question as to whether the mere fact that a controversy exists between a carrier and a state rate-making body as to the validity of an intrastate rate alleged to discriminate against interstate commerce, justifies an injunction such as prayed for here, or whether a carrier may, by commencing a proceeding before the Interstate Commerce Commission to test the validity of an intrastate rate under Section 13 of the Interstate Commerce Act, after an order has been made by a state commission fixing such rate, properly call for injunctive relief. Our opinion is, however, that, under the circumstances of this case, this Court can and should for the purpose of preserving the status quo until such time as the Interstate Commerce Commission may complete its investigation and file its decision in Docket No. 17,000, grant an interlocutory injunction restraining the defendants from putting into effect [fol. 108] the order of May 8, 1929, upon the plaintiff's furnishing a bond in the sum of $150,000.00 to be approved by any one of the Judges who sat at this hearing—conditioned that if it shall be determined that the rates fixed by the order of May 8th were lawful rates, they will make refunds of the difference between what intrastate shippers have been required to pay and what they would have paid if an injunction had not been granted.

If, for any reason, the Interstate Commerce Commission should fail or refuse to decide whether the rates fixed by the order of May 8, 1929, are violative of Section 13 of the Interstate Commerce Act, or to make findings or reach a decision from which that question may be fairly determined, or shall hereafter unreasonably delay determination of that question, the defendants may move for a vacation of the injunction.

An order may be drawn granting the application for an interlocutory injunction, in accordance with Section 383, Title 28, U. S. C., to be effective upon the filing of the bond herein provided for.

Dated this 6th day of July, 1929.

Archibald K. Gardner, United States Circuit Judge.
Andrew Miller, United States District Judge.
John B. Sanborn, United States District Judge.

[File endorsement omitted.]

[fol. 109] IN UNITED STATES DISTRICT COURT

INTERLOCUTORY INJUNCTION—Filed July 9, 1929

The motion of plaintiffs for an interlocutory injunction in this case having come on regularly to be heard on the 2nd day of July, 1929, by the Honorable A. K. Gardner, Circuit Judge, and the Honorable Andrew Miller and the Honorable John B. Sanborn, District Judges, in the Federal Court Room in the City of St. Paul, Minnesota; and it appearing that five days' notice of said hearing has been duly given to the Governor and the Attorney General of the state of North Dakota and to the defendants in this case, as provided by law, and that the plaintiffs and defendants have filed a stipulation in writing that said motion may be heard at the City of St. Paul, Minnesota; and the Court having heard the arguments of counsel for plaintiffs and defendants and being fully advised in the premises,

And it appearing to the satisfaction of the Court that the establishment of the scale of distributing or jobbing class rates required by the order of May 8, 1929, of the Board of Railroad Commissioners of North Dakota in Case No. 2255 and Case No. 2875, will result in rates substantially below the interstate class rates applying to and from North Dakota for similar services; that there are now proceedings pending before the Interstate Commerce Commission in which the plaintiffs herein and the defendant board have participated and in which said Interstate Commerce Commission will determine whether the disparities between said interstate rates and the intrastate rates required by said order of May 8, 1929, result in an unjust discrimination against and burden upon interstate commerce in violation of Section 13 of the Interstate Commerce Act; that if plaintiffs are required to establish the intrastate rates required by said order to be made effective July 12, 1929, and if the Interstate Commerce Commission later determines in said proceedings that said reduced intrastate rates are unreasonably low and that their establishment and collection results in such unjust discrimination against interstate commerce plaintiffs will suffer large revenue losses prior to such determination by the Interstate Commerce Commission and will be irreparably damaged and an unlawful

burden will be placed on interstate commerce; that if said order is enjoined until the Interstate Commerce Commission determines said questions such irreparable damage will be avoided, and shippers and receivers of traffic moving on North Dakota intrastate class rates subsequent to July [fol. 110] 12, 1929, will be in position to recover the difference between the present rates and those prescribed in said order if the Interstate Commerce Commission later determines that the distributing or jobbing rates required by said order of May 8, 1929, do not result in unjust discrimination against interstate commerce; that unless said intrastate rates are enjoined plaintiffs have no plain, adequate or complete remedy at law; and that if said order is not complied with plaintiffs will be subjected to numerous proceedings and prosecutions both for equitable and mandatory relief and to a multiplicity of penalties and fines, although the Interstate Commerce Commission shall later determine that said intrastate rates result in an unjust discrimination against interstate commerce;

It is therefore hereby ordered that the said Board of Railroad Commissioners of the state of North Dakota, and C. W. McDonnell, Fay Harding and Ben C. Larkin as members of said Board, and James Morris as Attorney General of the state of North Dakota, and their successors in office and their servants, employes, agents and all persons acting under the control or authority of any and all of said defendants, be, and each of them hereby is, enjoined and restrained from putting into effect or enforcing, or attempting to put into effect or to enforce, the scale of distributing or jobbing class rates prescribed by the order of May 8, 1929, of the Board of Railroad Commissioners of the state of North Dakota in Case No. 2255 and Case No. 2875, and from instituting any action or proceeding of any sort whatsoever to enforce said scale of distributing or jobbing class rates or to hinder or obstruct the charging or collecting by plaintiffs of the existing scale of class rates for transportation between points in the state of North Dakota, and from instituting any proceeding to subject plaintiffs to any penalties for failure to comply with the said provisions of said order of May 8, 1929, and from ordering, seeking, aiding or abetting in any manner whatever any person to commit any or either of the acts aforesaid.

And it is further hereby ordered that the said defendants, and each of them, are so enjoined and restrained until the Interstate Commerce Commission has determined, either in its Docket 17000, Part 2, now pending for decision, or in the proceeding under Section 13 of the Interstate Commerce Act which the plaintiffs herein have petitioned the Interstate Commerce Commission to institute, the question of whether the establishment and collection of the intrastate [fol. 111] distributing or jobbing scale of *of* class rates prescribed in said order of May 8, 1929, causes any undue or unlawful advantage, preference or prejudice as between persons or localities in intrastate commerce on the one hand and interstate or foreign commerce on the other hand, or in undue, unreasonable, or unjust discrimination against interstate or foreign commerce, and until the further order of this Court.

And it is further ordered that a copy hereof be served upon each of the defendants and that from and after the date of service each and all of said defendants shall observe and comply herewith.

And it is further ordered that this interlocutory injunction shall become effective upon the filing of bonds in the aggregate amount of $150,000.00 in favor of the United States of America, for the benefit of those affected by the injunction, as follows, to-wit:

By the Great Northern Railway Company in the penal sum of Forty-five Thousand Dollars ($45,000.00);

By the Northern Pacific Railway Company in the penal sum of Forty-five Thousand Dollars ($45,000.00);

By the Minneapolis, St. Paul & Sault Ste. Marie Railway Company in the penal sum of Thirty Thousand Dollars ($30,000.00);

By the Chicago, Milwaukee, St. Paul & Pacific Railroad Company in the penal sum of Twenty Thousand Dollars ($20,000.00);

By the Farmers Grain and Shipping Company in the penal sum of Ten Thousand Dollars ($10,000.00);

such bonds to be conditioned that, if it shall be determined that the rates fixed by the order of May 8, 1929, were lawful rates, said plaintiffs will make refunds of the difference between what intrastate shippers have been required to pay

and what they would have paid if an injunction had not been granted.

Dated this 9th day of July, 1929.

Archibald K. Gardner, U. S. Circuit Judge. Andrew Miller, U. S. District Judge. John B. Sanborn, U. S. District Judge.

[File endorsement omitted.]

[fol. 112] IN UNITED STATES DISTRICT COURT

PETITION FOR APPEAL TO SUPREME COURT OF THE UNITED STATES AND ORDER ALLOWING SAME—Filed July 31, 1929

Now comes the above named appellants, Board of Railroad Commissioners of the State of North Dakota, and C. W. McDonnell, Fay Harding and Ben C. Larkin as members of and constituting said Board, and James Morris as Attorney General of the State of North Dakota, by their counsel, and feeling themselves aggrieved by the decree granting an interlocutory injunction herein, which decree was entered on the 9th day of July, A. D. 1929, and upon said day entered upon the journals of the District Court of the United States for the District of North Dakota, Southwestern Division, hereby pray that an appeal may be allowed from the decree granting said interlocutory injunction of the District Court of the United States for the District of North Dakota, Southwestern Division, to the Supreme Court of the United States, for the reasons set forth in the assignments of error hereto attached and made a part hereof.

Petitioners further pray that a citation issue as provided by law and that a transcript of record of such proceedings and documents upon which said decree was based as set out in the præcipe, duly authenticated, be sent to the Supreme Court of the United States sitting at Washington, D. C. under the rules of such Court in such cases made and provided.

Dated this 30th day of July, A. D. 1929.

James Morris, Attorney General of the State of North Dakota and Attorney for Defendants and Appellants.

Appeal allowed upon giving bond as allowed by law in the sum of — Dollars.

I hereby certify that the matter in controversy herein as shown by the records, exceeds in value $3,000.00, exclusive of interest and costs.

Andrew Miller, Judge of the District Court of the United States for the District of North Dakota.

[fol. 113] Due and personal service of the within Petition and Order by copy is hereby acknowledged this 30th day of July, 1929.

Lawrence, Murphy & Nilles, D. F. Lyons, F. J. Gehan, J. N. Davis, A. H. Lossow, F. G. Dorety, R. J. Hagman, Attorneys for Plaintiffs and Appellees.

[File endorsement omitted.]

IN UNITED STATES DISTRICT COURT

ASSIGNMENTS OF ERROR ON APPEAL TO THE SUPREME COURT OF THE UNITED STATES—Filed July 31, 1929

Now come the above named defendants and appellants, by their counsel, and in connection with their Petition for Appeal, say that in the record, proceedings and in the decree granting an interlocutory injunction against these defendants and appellants, manifest error has intervened to the prejudice of the defendants, to-wit:

I

The Court erred in finding and deciding that the enforcement of the order of the Board of Railroad Commissioners of the State of North Dakota dated May 8, 1929 will result in rates substantially below interstate class rates applying to and from North Dakota for similar services.

II

The Court erred in finding and deciding that the plaintiffs will be irreparably damaged by the enforcement of the defendant, Board of Railroad Commissioners' Order of May 8, 1929.

III

The Court erred in finding and deciding that there are now pending before the Interstate Commerce Commission proceedings in which the plaintiffs herein and the defendant, Board of Railroad Commissioners, have participated in which said Interstate Commerce Commission will determine whether the disparities between said interstate rates and the intrastate rates required by said order of May 8, 1929, result in an unjust discrimination against and burden upon interstate commerce in violation of Section 13 [fols. 114-117] of the Interstate Commerce Act.

IV

That the Court erred in finding and deciding that the enforcement of said order of May 8, 1929 will or might result in an unlawful burden upon interstate commerce.

V

That the Court erred in finding and deciding that unless said intrastate rates, as fixed by said order of May 8, 1929, are enjoined, the plaintiffs have no plain, adequate or complete remedy at law.

VI

That the Court erred in finding and deciding that if said order of May 8, 1929, is not complied with, the plaintiffs will be subjected to numerous proceedings and prosecutions both for equitable and mandatory relief and to a multiplicity of penalties and fines, although the Interstate Commerce Commission shall later determine that said intrastate rates shall result in an unjust discrimination against interstate commerce.

VII

That the Court erred in enjoining and restraining the defendants and appellants until the Interstate Commerce Commission has made a determination, either in its Docket 17,000, Part 2, now pending for decision, or in the proceeding under Section 13 of the Interstate Commerce Act, or until the further order of the Court.

VIII

That the Decree granting said interlocutory injunction is contrary to law.

Wherefore Defendants pray that the Decree of the United States District Court for the District of North Dakota, Southwestern Division, entered July 9, 1929, be reversed.

Dated this 30th day of July, 1929.

James Morris, Attorney General of North Dakota and Attorney for Defendants and Appellants.

[File endorsement omitted.]

[fol. 118] IN SUPREME COURT OF THE UNITED STATES

AFFIDAVIT OF SERVICE

STATE OF NORTH DAKOTA,
County of Cass, ss:

L. Margaret Schmallen, being first duly sworn, on oath deposes and says: That she is a resident of the City of Fargo, Cass County, North Dakota, and a citizen of the United States of America; over the age of twenty-one years; not a party to the above entitled proceeding, nor related to any of the parties thereto, nor interested in said matter:

That in the City of Fargo, Cass County, North Dakota, on the 11th day of September, A. D. 1929, she served the annexed Statement of Points Relied Upon Upon Appeal to the Supreme Court and Designation of Parts of the Record Necessary for the Consideration Thereof upon the copartnership of Lawrence, Murphy & Nilles, attorneys for plaintiffs and appellees in the above entitled action, by handing to and leaving with Herbert G. Nilles, also known as H. G. Nilles, one of the partners and a member of said firm of Lawrence, Murphy & Nilles, personally, a true and correct copy of said Statement hereto attached.

That she knew the person so served to be H. G. Nilles, a member of said firm of Lawrence, Murphy & Nilles, and one of the attorneys for the plaintiffs and appellees.

L. Margaret Schmallen.

Subscribed and sworn to before me this 11th day of September, A. D. 1929. C. C. Wattam, Notary Public, Cass County, N. Dak. My commission expires July 29, 1932. (Seal of C. C. Wattam, Notary Public, State of North Dakota.)

[fol. 119] IN SUPREME COURT OF THE UNITED STATES

STATEMENT OF POINTS RELIED UPON UPON APPEAL TO THE SUPREME COURT AND DESIGNATION OF PARTS OF THE RECORD NECESSARY FOR THE CONSIDERATION THEREOF—Filed Sept. 13, 1929

Now come the above named defendants, and as points upon which they intend to rely in this appeal, state the following:

I

The order of the Railroad Commission of the State of North Dakota dated May 8, 1929, will not result in an unlawful burden upon interstate commerce.

II

That the plaintiffs had at the time of the commencement of this action a plain, adequate and complete remedy at law in the Courts of the State of North Dakota.

III

That the pendency of a proceeding before the Interstate Commerce Commission under the Hoch Smith Resolution known as Docket 17,000, Part 2, is not ground for and does not give the Court jurisdiction to grant an interlocutory injunction.

[fol. 120]

IV

That the pendency before the Interstate Commerce Commission of a proceeding under Section 13 of the Interstate Commerce Act involving the order of the Board of Railroad Commissioners of May 8, 1929, is not ground for an

injunction and does not give the Court jurisdiction to grant an interlocutory injunction.

V

That the discretion of the Board of Railroad Commissioners in fixing intrastate rates should not be interfered with by the Courts in the absense of a finding by the Interstate Commerce Commission to the effect that such intrastate rates cast a burden upon interstate commerce or discriminate against persons or places engaged in interstate commerce.

That in order to present the foregoing points to the Court it is necessary that the following portions of the record be considered and the Clerk of said Court is, therefore, hereby requested to print the following portions of said record, to-wit:

Bill of Complaint.
Application for Interlocutory Injunction.
Stipulation—Filed June 25, 1929.
Order of July 1st Setting Case Down for Hearing.
Amendment to Bill of Complaint.
Answer.
Decision.
Interlocutory Injunction.
Petition for Appeal and Order Allowing Same.
Assignments of Error.

Dated this 10th day of September, 1929.

James Morris, Attorney General of the State of North Dakota and Attorney for Defendants.

[fols. 121 & 122] Service of the within and annexed Statement of Points Relied Upon Upon Appeal to the Supreme Court and Designation of Parts of the Record Necessary for the Consideration Thereof is hereby admitted this 11th day of September, 1929.

—— ——, Attorneys for Plaintiffs and Appellees.

[fol. 123] [File endorsement omitted.]

[fol. 124] IN SUPREME COURT OF THE UNITED STATES

DESIGNATION OF ADDITIONAL PARTS OF RECORD CONSIDERED MATERIAL—Filed Sept. 30, 1929

Now come the plaintiffs and appellees above named, by their counsel, and state that they consider material to the determination of this appeal the following parts of the record in addition to those specified by counsel for defendants and appellants in their designation dated September 10, 1929:

Affidavit of James G. Morrison.
Affidavit of P. B. Biedelman.
Affidavit of Neal Williams.
Affidavit of T. A. Durrant.
Affidavit of G. M. Springer.

and the Clerk is respectfully requested to include said affidavits in the printed record.

Dated at St. Paul, Minnesota, this 21st day of September, 1929.

D. F. Lyons, H. H. Field, H. S. Mitchell, F. G. Dorety, R. J. Hagman, Attorneys for Plaintiffs and Appellees.

[fol. 125] Due service of the within Statement of Additional Parts of Record Considered Material by the receipt of a true and correct copy thereof is hereby acknowledged this 23rd day of September, 1929.

James Morris, Attorney for Defendants and Appellants.

[fol. 126] [File endorsement omitted.]

Endorsed on cover: File No. 34,495. North Dakota D. C. U. S. Term No. 364. Board of Railroad Commissioners of the State of North Dakota, C. W. McDonnell, Fay Harding, et al., etc., appellants, vs. Great Northern Railway Company, Northern Pacific Railway Company, Minneapolis, St. Paul & Sault Ste. Marie Railway Company, et al. Filed August 31st, 1929. File No. 34,495.